

No. 15586 ✓

United States
Court of Appeals
for the Ninth Circuit

ELIZABETH G. WILLIAMS, Executrix, Estate
of Preston L. Lykins, Deceased,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Appeal from the United States District Court for the
Northern District of California,
Southern Division.

FILED

AUG 23 1957

PAUL P. ORR, EN. CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

HELLER, EHRMAN, WHITE & McAULIFFE,

14 Montgomery Street,
San Francisco, California,

For Appellant.

CHARLES K. RICE,

Assistant Attorney General,
Department of Justice,
Washington 25, D. C.,

LLOYD H. BURKE,

United States Attorney,

LYNN J. GILLARD,

Assistant United States Attorney,

MARVIN M. MORGANSTEIN,

Assistant United States Attorney,
Post Office Building,
San Francisco, California,

For Appellee.

In the District Court of the United States, Northern District of California, Southern Division

Civil Action No. 35699

ELIZABETH G. WILLIAMS, EXECUTRIX,
ESTATE OF PRESTON L. LYKINS, DE-
CEASED, Plaintiff,

vs.

UNITED STATES OF AMERICA,
Defendant.

COMPLAINT FOR REFUND OF TAXES PAID

Plaintiff claims of defendant, United States of America, the sum of Ten Thousand Four Hundred Seventy-two Dollars and Ninety-nine Cents (\$10,472.99), representing income tax and interest erroneously and illegally assessed and collected from plaintiff without authority, together with interest thereon as provided by law, and complains and alleges as follows:

I.

Jurisdiction of this action is conferred by §1346 (a)(1) of Title 28 of the United States Code.

II.

Plaintiff now is, and at all times mentioned herein was, a resident of the First District of California.

III.

This action is one to recover a fiduciary income tax erroneously and illegally assessed and collected

without authority under the Internal Revenue Laws of the United States pursuant to authority conferred to sue by §1346(a)(1) of Title 28 of the United States Code.

IV.

On or about the 13th day of June, 1952, plaintiff filed a United States Fiduciary Income Tax Return with the District Director of Internal Revenue (formerly the Collector of Internal Revenue), First District of California, San Francisco, California, for the period beginning with the date of decedent's death on January 8, 1951, and ending December 31, 1951. Plaintiff kept books and records and the cash method of accounting and prepared said income tax return pursuant to that method; said income tax return showed a tax due in the sum of Fifteen Thousand One Hundred Forty-nine Dollars and Seventy Cents (\$15,149.70), which tax was paid by plaintiff to the District Director of Internal Revenue, First District of California, San Francisco, California. The sum of Three Thousand Three Hundred Seven Dollars (\$3,307.00) was paid on March 4, 1952, from the balance of Eleven Thousand Eight Hundred Forty-two Dollars and Seventy Cents (\$11,842.70), plus Seven Dollars and Twenty-one Cents (\$7.21) interest was paid on June 13, 1952.

V.

Subsequent to the filing of said return plaintiff was assessed additional tax for said period in the sum of One Thousand Two Hundred Forty-eight Dollars and Twenty-four Cents (\$1,248.24) and said

deficiency was paid to the District Director of Internal Revenue, First District of California, San Francisco, California, on or about November 25, 1955.

VI.

In said federal income tax return of plaintiff for the period beginning January 8, 1951, and ending December 31, 1951, plaintiff erroneously included and reported as part of plaintiff's gross income for said period the taxpayer's income for the period September 18, 1951, to December 31, 1951, which was permanently set aside for charitable and religious purposes and was exempt from income tax, on which income plaintiff erroneously paid income taxes in the sum of Seven Thousand Nineteen Dollars and Thirty-nine Cents (\$7,019.39) as a part of the Sixteen Thousand Three Hundred Ninety-seven Dollars and Ninety-four Cents (\$16,397.94) which were paid by plaintiff as set forth above in paragraphs IV and V. The income so erroneously included by plaintiff in said return constituted plaintiff's income for the period beginning September 18, 1951, and ending December 31, 1951, which plaintiff claims was permanently set aside for charitable and religious purposes and was exempt from income tax.

VII.

On or about May 12, 1953, plaintiff filed with the District Director of Internal Revenue, First District of California, San Francisco, California, a claim for refund on Treasury Form 843, a copy of which is attached hereto, marked Exhibit "A", and by reference made a part hereof.

VIII.

On or about January 24, 1955, plaintiff received from the District Director of Internal Revenue, San Francisco, California, a Revenue Agent's report stating that said claim had been reviewed and that it was recommended that said claim be rejected.

IX.

On or about December 28, 1955, plaintiff received a letter from the United States Treasury Department, Internal Revenue Service, Regional Commissioner, Appellate Division-San Francisco Region, San Francisco, California, a copy of which is attached hereto, marked Exhibit "B", and by reference made a part hereof, advising that plaintiff's claim for refund for the period beginning January 8, 1951, and ending December 31, 1951, in the amount of Seven Thousand Nineteen Dollars and Thirty-nine Cents (\$7,019.39) was disallowed.

Wherefore, plaintiff prays for judgment in the sum of Seven Thousand Nineteen Dollars and Thirty-nine Cents (\$7,019.39) with interest thereon from dates of payment as provided by law, for plaintiff's costs of suit herein incurred, and for such other and further relief as to this Court may deem meet in the premises.

MARTIN MINNEY, JR.,
ROBERT C. HARRIS,
HELLER, EHRMAN, WHITE &
McAULIFFE,

/s/ By ROBERT C. HARRIS,
Attorneys for Plaintiff.

Duly Verified.

EXHIBIT "A"

Claim

to be filed with the collector where assessment was made or tax paid.

The Collector will indicate in the block below the kind of claim filed, and fill in, where required, the certificate on the back of this form.

[X] Refund of taxes illegally, erroneously, or excessively collected.

Name of taxpayer or purchaser of stamps: Estate of Preston L. Lykins, Deceased.

Street address: C/o Heller, Ehrman, White & McAuliffe, 14 Montgomery Street.

City, postal zone number, and State: San Francisco 4, California.

1. District in which return (if any) was filed: 1st California District.

2. Period (if for tax reported on annual basis, prepare separate form for each taxable year) from 1/8, 1951, to 12/31, 1951.

3. Kind of tax: Income tax.

4. Amount of assessment, \$15,149.70; dates of payment, 3/4/52—\$3,307.00; 6/13/52—\$11,849.91.

6. Amount to be refunded, \$7,019.39.

I declare under the penalties of perjury that this claim (including any accompanying schedules and

Exhibit "A"—(Continued)

statements) has been examined by me and to the best of my knowledge and belief is true and correct.

Signed.....

Executrix of the Estate of Preston
L. Lykins.

Dated....., 19....

Estate of Preston L. Lykins
Claim for Refund

Preston L. Lykins died January 8, 1951 and under his will, a copy of which is attached hereto, he left his entire estate to his surviving wife, Mary T. Lykins, who died September 18, 1951. Under the will of Mary T. Lykins, a copy of which is attached hereto, the residue of her estate was left in trust to pay the income for religious and charitable uses and purposes to certain stated religious and charitable organizations during the life of the individual trustee, and upon the latter's death, the corpus vests in said organizations for said purposes. Although there are specific bequests and devises provided for under the will of Mary T. Lykins, it is specifically provided that no interest or income shall be payable on any legacies and all income received during administration shall be used for expenses of administration, or to the extent not necessary for that purpose, shall become part of the residue of the estate. Therefore, the entire income of the Estate of Preston L. Lykins, from the date of his wife's death (9/18/51), is permanently set aside for

the benefit of charitable and educational purposes and is exempt from income taxation.

The original return and computation of changes therein is as follows:

	Original Return	As Corrected
Net income:	\$33,257.04	\$33,257.04
Income from 9/18/51 to 12/31/51 permanently set aside for charitable purposes:	—0—	9,687.56
Net income taxable to fiduciary	\$33,257.04	\$23,569.48
Less: Exemption	600.00	600.00
Balance	\$32,657.04	\$22,969.48
Tax	\$15,149.70	\$ 8,130.31
Overpayment:		
Total tax due per original return.....		\$15,149.70
Payments:		
Tentative tax paid 3/4/52 \$ 3,307.00		
Balance with interest paid 6/13/52	11,849.91	
Total paid	\$15,156.91	
Total tax as corrected.....		\$ 8,130.31
Overpayment		\$ 7,019.39

EXHIBIT "B"

U. S. Treasury Department
Internal Revenue Service
Regional Commissioner
San Francisco, Calif.
Appellate Division—San Francisco Region
Room 1010 — 870 Market Street
San Francisco 2, California

In Reply Refer to
Ap:SF:AA:WBH

Mrs. Elizabeth G. Williams, Executrix of the
Estate of Preston L. Lykins, Deceased, Transferor
c/o Heller, Ehrman, White and McAuliffe
14 Montgomery Street
San Francisco, California

Dear Mrs. Williams:

Your proposal for settlement incorporated in a notice waiving, under the Internal Revenue Code, any restrictions on the assessment and collection of deficiencies in the income tax liabilities of the Estate of Preston L. Lykins, Deceased, for the taxable years ended December 31, 1951 and December 31, 1952, has been accepted.

The taxes as determined in the Revenue Agent's report dated January 24, 1955 discloses a total deficiency of \$10,302.88 in the income tax liability of the above-named Estate for the taxable years mentioned.

In view of the foregoing basis of settlement, the Estate's claim for refund for the year 1951 in the amount of \$7,019.39 will be disallowed. Official no-

Exhibit "B"—(Continued)

tice of the disallowance will be issued in accordance with the provisions of law applicable to the disallowance of claims.

A copy of this letter has been mailed to your representative, Mr. Charles A. Wood, Jr., c/o Heller, Ehrman, White and McAuliffe, 14 Montgomery Street, San Francisco, California, in accordance with the authority contained in the power of attorney executed by you.

Very truly yours,

/s/ H. M. SORRELL

H. M. Sorrell

Acting Assistant Chief Appellate.

[Endorsed]: Filed July 23, 1956.

[Title of District Court and Cause.]

ANSWER

The defendant, United States of America, by its attorney, Lloyd H. Burke, United States Attorney for the Northern District of California, for answer to the complaint of the plaintiff admits, alleges and denies:

Defendant denies the allegations contained in the preliminary and unnumbered paragraph of the complaint.

1.

Defendant admits the allegations contained in paragraph numbered I of the complaint.

2.

Defendant admits the allegations contained in paragraph numbered II of the complaint.

3.

Defendant admits the allegations contained in paragraph numbered III of the complaint, except that defendant specifically denies that any fiduciary income tax was erroneously and illegally assessed and collected from plaintiff without authority under the Internal Revenue laws of the United States.

4.

Defendant admits the allegations contained in paragraph numbered IV of the complaint.

5.

Defendant admits the allegations contained in paragraph numbered V of the complaint.

6.

Defendant denies the allegations contained in paragraph numbered VI of the complaint.

7.

Defendant admits that plaintiff filed a claim for refund and that Exhibit "A" attached to the complaint is a copy of said claim. Except as specifically admitted in this answer, defendant denies each and every allegation and statement in said claim for refund.

8.

Defendant admits the allegations contained in paragraph numbered VIII of the complaint.

9.

Defendant admits the allegations contained in paragraph numbered IX of the complaint.

Wherefore, defendant prays that this action be dismissed, with costs to the defendant.

LLOYD H. BURKE,
United States Attorney,

/s/ By MARVIN D. MORGENSTEIN,
Assistant United States Attorney.

Certificate of Mailing Attached.

[Endorsed]: Filed Sept. 24, 1956.

[Title of District Court and Cause.]

STIPULATION OF FACTS

It Is Hereby Stipulated by and between the parties hereto that the following allegations of fact are admitted by the pleadings and shall be taken to be true in the above entitled proceeding and received as evidence therein, subject to the right of either party, or both parties, to offer such further evidence as may be relevant, competent or material and not contrary to the facts herein stipulated, and subject to the right of either party to object at the hearing to any of the facts herein on the grounds of irrelevancy and immateriality:

1. Plaintiff is the duly appointed executrix of the last will and testament of Preston L. Lykins, deceased, and Letters Testamentary were issued to said executrix on the 20th day of February, 1951. The address of plaintiff is care of Heller, Ehrman, White & McAuliffe, 14 Montgomery Street, San Francisco, California. Plaintiff duly filed a United States Fiduciary Income Tax Return for the period commencing with the death of Preston L. Lykins, on January 8, 1951 and ending December 31, 1951; said return disclosed total income for said period in the sum of \$33,257.04, with a tax liability in the sum of \$15,149.70. Said return was audited by agents of the Bureau of Internal Revenue (now the Internal Revenue Service) and the net income subject to tax was determined to be the sum of \$35,162.76. Plaintiff kept books and records on the cash method of accounting and prepared said income tax return on a cash basis. Plaintiff paid the income tax liability disclosed by said return and the deficiency in tax determined by said audit, together with interest thereon, in the following amounts and on the following dates:

The sum of \$3,307.00 was paid on March 4, 1952; \$11,842.70, plus \$7.21 interest, was paid on June 13, 1952; and the deficiency in tax for said period in the sum of \$1,248.24, plus interest in the sum of \$270.42, was paid on or about November 25, 1955.

2. On or about May 12, 1953, plaintiff filed a claim for refund of income taxes for the period in controversy herein and said claim is marked Ex-

hibit "A" and is attached to plaintiff's complaint herein. On or about January 24, 1955, plaintiff received from the District Director of Internal Revenue, San Francisco, California, a Revenue Agent's Report stating that said claim had been reviewed and that it was recommended that said claim be rejected. On or about December 28, 1955, plaintiff received a letter from the United States Treasury Department, Internal Revenue Service, Regional Commissioner, Appellate Division-San Francisco Region, San Francisco, California, a copy of which is attached to plaintiff's complaint and is marked Exhibit "B," advising that plaintiff's claim for refund, in the amount \$7,019.39, for said period in controversy was disallowed.

It Is Further Stipulated by and between the parties hereto that the following facts shall be taken to be true in the above entitled proceedings and received as evidence therein, subject to the right of either party, or both parties to offer such further evidence as may be relevant, competent or material and not contrary to the facts herein stipulated, and subject to the right of either party to object at the hearing to any of the facts herein on the grounds of irrelevancy and immateriality:

1. The amount of plaintiff's claim for refund was computed by plaintiff on the basis of the ratio that the number of days commencing with the date of death of the decedent's surviving spouse (September 18, 1951) and ending December 31, 1951, bears to the total number of days in the taxable

period of said return. If it is determined by the Court that plaintiff is entitled to a refund as claimed by plaintiff, then the amount of the refund may be computed and agreed upon by the parties and in the absence of an agreement between the parties, the matter of the amount of the refund may be reopened in this proceeding by either party hereto.

2. Preston L. Lykins, the decedent herein, died on January 8, 1951, leaving a will which was admitted to probate in the Superior Court in and for the City and County of San Francisco, a copy of which is attached hereto and marked Exhibit "1."

3. The decedent was survived by his spouse, Mary T. Lykins, who died on September 18, 1951, leaving a will which was admitted to probate in the Superior Court in and for the City and County of San Francisco, a copy of which is attached hereto and marked Exhibit "2."

4. Copies of plaintiff's First and Final Account as executrix of the last will and testament of Preston L. Lykins, deceased, and the Decree of Settlement of First and Final Account and of Final Distribution are attached hereto and are marked Exhibits "3" and "4," respectively.

5. Copies of plaintiff's First and Final Account as executrix of the last will and testament of Mary T. Lykins, deceased, and the Decree of Settlement of First and Final Account and of Final Distribution are attached hereto and are marked Exhibits "5" and "6," respectively.

6. Plaintiff duly filed a United States Fiduciary Income Tax Return for the period commencing with the death of Mary T. Lykins, on September 18, 1951, and ending December 31, 1951. Said return was audited by agents of the Bureau of Internal Revenue (now Internal Revenue Service) and the Revenue Agent's Report of said audit is attached hereto and is marked Exhibit "7."

7. The Internal Revenue Service determined, pursuant to said Revenue Agent's audit of the fiduciary income tax returns for the Estate of Mary T. Lykins, deceased, that the trust and the beneficiaries thereof set forth in the last will and testament of Mary T. Lykins is a trust for charitable, educational and religious purposes within the meaning of section 23(o) of the 1939 Internal Revenue Code (now section 170(c) of the 1954 Internal Revenue Code.

/s/ MARTIN MINNEY, JR.,

/s/ ROBERT C. HARRIS,

Counsel for Plaintiff.

HELLER, EHRMAN, WHITE &
McAULIFFE,

LLOYD H. BURKE,

United States Attorney,

/s/ By LYNN J. GILLARD,

Assistant United States Attorney,

Counsel for Defendant.

EXHIBIT "1"

120126

WILL

I, Preston L. Lykins, of San Francisco, California, over the age of twenty-one (21) years, being of sound and disposing mind and memory and not acting under duress, menace, fraud or undue influence of any person whomsoever, do make, publish and declare this my last will and testament in the manner following:

Article I.

I do hereby revoke any and all wills and codicils to wills previously made by me.

Article II.

I hereby declare that I am married and that my wife's name is Mary T. Lykins. I have no children and there are no children of mine now deceased leaving issue now surviving.

Article III.

With the exception of my personal effects which constitute my separate property, all other property belonging to me, or in which I have any interest, constitutes the community property of my said wife, Mary T. Lykins, and me.

Article IV.

I hereby appoint my said wife, Mary T. Lykins, and my wife's niece, Elizabeth G. Williams, of Berkeley, California, a co-executrices of this Will, and I direct that they shall serve in that capacity without bonds. Should either my said wife or the

Exhibit "1"—(Continued)

said Elizabeth G. Williams predecease me, or, if for any reason, either of them shall be unable or unwilling to act as an executrix of this will, then I direct that the other of them shall act as sole executrix of this will, she to serve without bond. Should my said wife and the said Elizabeth G. Williams both predecease me, or should both of them, for any reason, be unable or unwilling to act as an executrix of this will, then I appoint Wells Fargo Bank & Union Trust Co., Market and Montgomery Streets, San Francisco, California, to act as sole executor of this will.

My said executors, in addition to the powers of executors under the law, shall have full power to sell, exchange, lease, mortgage, or pledge any property of my estate, whether real or personal (excluding, however, all items of real and personal property specifically bequeathed under the provisions of this will) and to invest and reinvest monies coming into their hands, all without previous order of court and with or without notice, and upon such terms and conditions as they may deem best, but subject, however, to confirmation by court, as provided by law.

Article V.

I give, devise and bequeath all of my property and estate, both real and personal, and wherever situated, to my said wife, Mary T. Lykins, if she shall survive me.

Article VI.

If my said wife shall predecease me, then I

Exhibit "1"—(Continued)

direct that my said executors shall pay all State Inheritance and Federal Estate taxes due from my estate or from any person interested therein, it being my express wish and intention that each of the hereinafter named legatees, devisees and beneficiaries under this will shall not be charged with, or required to pay, or to contribute toward the payment of, any portion of such taxes, but that their respective shares of my estate, as hereinafter provided, shall go to and vest in them free of any such taxes. In the eventuality contemplated by this Article VI, i.e., that my said wife shall not survive me, then all such State Inheritance and Federal Estate taxes shall be a charge against, and shall be paid from, the residue of my estate.

Article VII.

For the purpose of identification, the Eula G. Elliott, who is mentioned in this Article VII, is a niece of my said wife, Mary T. Lykins; the Elizabeth Elliott, who is mentioned in this Article VII, is a grand-niece of my said wife, and the Roy H. Elliott, Jr., who is mentioned in this Article VII is a grand-nephew of my said wife. If my said wife shall predecease me, then my property and estate is hereby disposed of as follows:

(a) I give and bequeath all of my personal effects, all personal effects and jewelry which belonged to my said wife and which I may have inherited from her, and the entire contents of my home in San Francisco, California, including, but

Exhibit "1"—(Continued)

not restricted to, all furniture, furnishings, dishes, silverware, bric-a-brac, linens and objects of art, situated therein at the time of my death, to the said Elizabeth G. Williams and the said Eula G. Elliott, also of Berkeley, California, share and share alike, or to the survivor of them, should one of them predecease me.

(b) I give, devise and bequeath the real property, together with all improvements thereon, situated at 13th and K Streets, Sacramento, California, and commonly known as "No. 1300 K Street," now belonging to, and standing of record in the names of, my said wife and me (provided the said property is owned by me at the time of my death) to the said Elizabeth Elliott of Berkeley, California. Should the said Elizabeth Elliott predecease me, then the property mentioned in this subdivision (b) of this Article VII shall go to and vest equally in her living issue by right of representation; or, failing such issue then surviving, in said Roy H. Elliott, Jr., if he be living, and if not living, then said property shall constitute and be a part of the residue of my estate and shall be disposed of in like manner therewith.

(c) I give, devise and bequeath the Lykins Ranch in Sacramento County, California, consisting of one hundred twenty-seven (127) acres of land, more or less, now owned and standing of record in the names of my wife and me, together with all improvements, farm equipment, livestock, buildings

Exhibit "1"—(Continued)

and the entire contents of all such buildings, including household furniture and furnishings (provided the said ranch property is owned by me at the time of my death) to the said Roy H. Elliott, Jr.; provided, however, that should the said Roy H. Elliott, Jr., predecease me, then the property described in this subdivision (c) of this Article VII shall go to and vest equally in his living issue by right of representation; or, failing such issue then surviving, in the said Elizabeth Elliott if she be living, and if not living, then said ranch property shall constitute and be a part of the residue of my estate and shall be disposed of in like manner therewith.

(d) I give and bequeath the sum of Five Thousand Dollars (\$5,000.00) to my said wife's nephew, Stewart Snider, of Monterey, California, if he be living; and, if not living, then to his living issue by right of representation.

(e) I give and bequeath the sum of Three Thousand Dollars (\$3,000.00) to my said wife's nephew, Earl Snider, of Denair, California, if he be living; and, if not living, then to his living issue by right of representation.

(f) I give and bequeath the sum of Five Thousand Dollars (\$5,000.00) to the Shriners' Hospital For Crippled Children, a corporation, to be used exclusively for the benefit of the hospital located in the City and County of San Francisco, State of California, owned, operated and maintained by said corporation.

Exhibit "1"—(Continued)

(g) I give and bequeath the sum of Five Thousand Dollars (\$5,000.00) to Washington Lodge No. 20 F. & A.M. of Sacramento, California; such bequest to be used for the perpetual care of that certain cemetery plot standing of record in the names of P. L. Lykins and N. G. Curtis, and situated in the cemetery maintained by the City of Sacramento, California.

(h) I give and bequeath the sum of Two Thousand Five Hundred Dollars (\$2,500.00) to The Masonic Homes of California, a corporation, to be used exclusively for the benefit of the Home for the Aged owned, operated and maintained by said corporation at Decoto, California.

(i) I give and bequeath the sum of Two Thousand Five Hundred Dollars (\$2,500.00) to The Masonic Homes of California, a corporation, to be used exclusively for the benefit of the Home for Children owned, operated and maintained by said corporation, at Covina, California.

(j) I give and bequeath the sum of Ten Thousand Dollars (\$10,000.00) to Robert K. Pattridge in appreciation of his many years of service to me, provided he is in my employ at the time of my death. Should the said Robert K. Pattridge not be in my employ at the time of my death, then this bequest shall lapse.

(k) I give and bequeath the sum of Ten Thousand Dollars (\$10,000.00) to my good friend, Dr. John Philip Strickler, of San Francisco, California,

Exhibit "1"—(Continued)

as a token of my gratitude and friendship, and in appreciation of his many kindnesses toward me.

(1) After carrying out all of the foregoing provisions of this Article VII, after payment by my said executors of all State Inheritance and Federal Estate taxes due from my estate or from any person interested therein, as directed in Article VI of this will, and after payment by my said executors of all debts and claims and expenses of administration, I give, devise and bequeath all of the rest, residue and remainder of my property and estate, both real and personal, and wherever the same may be situated, to the said Elizabeth G. Williams, in trust, nevertheless, to hold, manage and distribute in accordance with the uses and purposes mentioned in Article VIII of this will and under the terms and conditions mentioned in Article IX hereof. Said trustee shall act without bond.

Article VIII.

(a) It is my desire and purpose, in the event that my said wife, Mary T. Lykins, shall predecease me, to devote a substantial part of my estate to religious and charitable uses and purposes, and to make such provision therefor in this will. The said Elizabeth G. Williams, the trustee mentioned in subdivision (1) of Article VII of this will, is fully aware of this desire and purpose and she shall accordingly invest and reinvest the trust property to be distributed to her hereunder, collect the income therefrom, pay all expenses incidental to the

Exhibit "1"—(Continued)

administration of the trust, and then apply the net income therefrom as follows:

All of the annual net income from the trust property shall be used by my said Trustee exclusively for religious, charitable and educational purposes. In this connection I direct that such annual income shall be divided and distributed by said Trustee at such times, in such manner, and in such proportions as she in her sole and exclusive discretion shall determine (subject only to the direction that the entire annual net income shall be distributed, and that no part thereof shall be accumulated) among any or all of the following named corporations or institutions:

John Milton Society For The Blind, 156 Fifth Avenue, New York, New York.

Hebrew Evangelization Society, Inc., 2209 Michigan Avenue, Los Angeles, California.

The Fuller Foundation, Pasadena, California. All payments made to this institution are to be used in furthering the religious broadcasting activities of Dr. Charles E. Fuller, during his lifetime, and thereafter to such use as the Board of Directors of the Fuller Foundation shall direct in furthering the objectives of that institution.

American Bible Society, 450 Park Avenue, New York 22, New York.

Gramercy Boys' Club, 380 East 143rd Street, New York, New York.

Exhibit "1"—(Continued)

(b) Upon the death of my said Trustee, Elizabeth G. Williams, the trust shall cease and terminate and the entire principal or corpus of the trust estate together with any accrued or accumulated income thereon shall thereupon vest in and be distributed to the following named beneficiaries in the following proportions:

Twenty per cent (20%) thereof to said above mentioned John Milton Society For The Blind.

Twenty per cent (20%) thereof to said above mentioned Hebrew Evangelization Society, Inc.

Twenty per cent (20%) thereof to said above mentioned The Fuller Foundation. The share of the trust estate so distributed to this beneficiary shall be used in furthering the religious broadcasting activities of Dr. Charles E. Fuller, during his lifetime, and shall, thereafter to the extent that such share remains unexpended, be used in **furthering** the objectives of that institution as may be determined in the discretion of its Board of Directors.

Twenty per cent (20%) thereof to said above mentioned American Bible Society.

Twenty per cent (20%) thereof to said above mentioned Gramercy Boys' Club.

(c) In the event that any of the charitable corporations or institutions hereinabove named in this Article VIII shall not be in existence at the date of the death of my said Trustee, Elizabeth G. Wil-

Exhibit "1"—(Continued)

liams, and the consequent termination of the trust, or in the event that any of said charitable corporations or institutions cannot for any reason take and receive the portions of the trust estate hereinabove given to such charitable corporation or institution upon the termination of the trust, then in either of such events, the portion of the trust estate so given to such charitable corporation or institution shall be divided between, and shall vest equally in, the other charitable corporations or institutions hereinabove named which are then in existence and can take and receive the trust property going to them under the terms of this will.

(d) Said Wells Fargo Bank & Union Trust Co. is hereby appointed as successor Trustee to Elizabeth G. Williams and shall, upon the death of said Elizabeth G. Williams and the consequent termination of the trust hereby created, succeed her for the sole purpose of winding-up the administration of the trust estate as rapidly as in practicable and of distributing the same in accordance with the provisions of this will. Said successor Trustee shall also serve without bond and shall possess, to the extent necessary to the winding-up and distribution of the trust estate in a sound, orderly and business-like manner, and in a manner protective of the best interests of the beneficiaries thereof, all of the authority and powers provided for under Article IX of this will. Said successor Trustee is also hereby empowered in its sole discretion to sell and convert into cash the entire trust estate coming into its

Exhibit "1"—(Continued)

hands, in the event that such sale and conversion will, in the opinion of the successor Trustee, enable it to make a more practical division of the cash so realized between the several beneficiaries in the proportions hereinabove specified. In this connection I have in mind that the character of the trust estate, at the time of the termination of the Trust, may be such as to make impracticable or inadvisable a distribution thereof in kind to said beneficiaries in the proportions to which they are respectively entitled under the provisions of subdivision (b) of this Article VIII.

(e) In the event that, for any of the reasons set forth in Sections 41, 42 or 43 of the Probate Code of the State of California, my executors are unable to distribute any portion of my estate in the manner provided for under Articles VII and VIII of this will, then I direct that in such event such portion of my estate shall be distributed, and I give, devise and bequeath the same to the said Elizabeth Elliott and the said Roy H. Elliott, Jr., share and share alike. Should the said Elizabeth Elliott or the said Roy H. Elliott, Jr., predecease me, then his or her share shall go to and vest equally in his or her then surviving issue, per stirpes, and not per capita, or, failing such issue then surviving, in the survivor of the said Elizabeth Elliott and the said Roy H. Elliott, Jr. In this connection, however, I shall expect the said Elizabeth Elliott and the said Roy H. Elliott, Jr. to respect my wishes and intentions in disposing of a portion of my estate for certain

Exhibit "1"—(Continued)

charitable, religious and educational purposes, as specified in Articles VII and VIII of this will, and I am confident that neither of them will voluntarily seek to defeat those wishes and intentions.

Article IX.

To carry out the purpose of the Trusts created by this will, and subject to any of the limitations set forth elsewhere in this will, the trustee shall have the following powers and authority in the administration of said Trusts in addition to those now or hereafter conferred by law, namely:

(a) To hold and retain in the discretion of the Trustee any of the property coming into her or its possession hereunder, in the same form as that in which it is received; also to sell at public or private sale for cash or upon terms, improve, rent, lease (for terms within or extending beyond the expiration of the Trusts), mortgage, transfer, exchange or otherwise deal with the whole or any part of the trust property, upon such terms and conditions as the trustee may deem advisable; to borrow money, to execute a note or notes therefor and to secure the same by the execution of pledges, mortgages or deeds of trust upon the trust properties or any part thereof; to deal with the trust properties as fully and freely as if they were the sole and individual properties of the Trustee; to invest and reinvest the trust estate in the absolute discretion of the Trustee in sound securities without being limited to securities legal for savings banks and trust funds in the State of California.

Exhibit "1"—(Continued)

(b) To compromise, arbitrate or otherwise adjust claims in favor of or against the Trusts; to carry such insurance as the Trustee may deem advisable on all property forming a part of the trust estate.

(c) To advance funds to the Trusts for any trust purpose; such advances with interest at current rates to be a first lien on and to be repaid out of principal or income; to reimburse the Trustee from principal or income for any loss or expense incurred by reason of the holding and preserving by the Trustee of any property from a part of the trust estate.

(d) If the Trustee shall at any time hold securities under the Trusts, the Trustee shall apply the entire net income of such securities as hereinabove directed in this will, irrespective of the price paid for said securities or of their market value at any time; it being intended hereby that no part of such income shall be applied as a sinking fund or otherwise to offset the gradual loss of the premium upon the market value or purchase price of such securities; all stock dividends and amounts received upon the sale of rights to subscribe for stocks or any profits accruing from the exercise of such rights shall be credited to principal and added to the trust estate and held as a part thereof. The Trustee may exercise any right or option of subscription or otherwise, which may at any time attach, belong or be given to the holders of any stocks, bonds, securities or other instruments in the nature

Exhibit "1"—(Continued)

thereof, forming a part of the trust estate; and said Trustee may join in any plan of lease, mortgage, consolidation, reorganization, or foreclosure of any corporation, trust or organization, or of the property or assets thereof in which the trust estate may hold any stocks, bonds or other securities, and may take or hold any securities issued under such plan and pay any assessments thereunder.

(e) In any case in which the Trustee is required, pursuant to the provisions of the Trusts hereby created, to divide the trust estate into parts or shares or to distribute the same, the Trustee is hereby authorized and empowered in the absolute discretion of the Trustee to make such division or distribution in kind or partly in kind and partly in money and for the purpose of such division or distribution, the judgment of the Trustee concerning the propriety thereof and the relative value for the purposes of division or distribution of the property so allotted shall be binding and conclusive upon all persons interested therein; and as hereinabove provided in this will, the corporate successor Trustee is empowered to sell some of the trust property or the whole thereof, should said Trustee deem such sale necessary and to the best interests of the beneficiaries among whom the trust estate is to be divided upon the final termination of the Trusts as herein provided.

(f) In addition to the foregoing, I generally desire to, and do, hereby vest in the Trustee all such

Exhibit "1"—(Continued)

general and particular powers as may be necessary or convenient to enable her or it to attend to all of the business of the trust estate in the most direct and efficient way without being required to apply to any court and without being unduly hampered by personal liability or unfavorable results of any action that such Trustee may take in good faith and in the exercise of reasonable judgment and care.

Article X.

(a) It may not be practical or expedient for my said executors to pay and distribute some, or any, of the specific legacies, bequests and devises provided for in Article VII of this will, within a period of one year after my death. It is accordingly my direction that no interest shall be or become due or payable on any of said legacies, bequests or devises, at any time prior to the actual distribution thereof by my said executors.

(b) Should my wife, Mary T. Lykins, predecease me, thus making the disposition of my estate subject to the provisions of Articles VI, VII, VIII and IX of this will, then I direct that all income received by my executor from all property of my estate, during the administration thereof and prior to the final distribution thereof as provided in said last mentioned articles of this will, shall, to the extent necessary, be used for the payment of probate administration expenses, taxes and other charges or claims against my estate, and for the payment of evpenses incurred or expended in the care, preser-

Exhibit "1"—(Continued)

vation, management and maintaince of all of the property of my estate during administration, and to the extent that such income is not so used or expended it shall become a part of the residue of my estate. In this connection it is my express wish and intention that the right of any devisee or legatee under this will or of any beneficiary under the Trusts hereby created to receive income from any property hereby devised or bequeathed, or to receive income from the trust property, as the case may be, shall in no event accrue until after the date of distribution of such bequest or devise, or, in the case of said trust beneficiaries, until after the date of distribution to the Trustee of the property constituting the trust estate, and not from the date of my death.

Article XI.

I have purposely and intentionally made no provision in this will for any person or persons other than those herein specifically named, whether claiming to be an heir of mine or not. Accordingly, if, notwithstanding the terms and provisions of this will, any person not named as a devisee, legatee or beneficiary herein, whether a legal heir or claiming to be a legal heir of mine, shall establish his or her right to inherit any portion of my estate, then to such person I give and bequeath the sum of One Dollar (\$1.00) and no more. Furthermore, if any person, whether a beneficiary under this will or not mentioned herein, or any legal heir of mine, or any

Exhibit "1"—(Continued)

person claiming under any of them, shall directly or indirectly contest this will or the probate thereof, or object to any of the provisions hereof, or directly or indirectly attack or seek to impair any of its provisions, or conspire with, or voluntarily assist, anyone attempting to do any of those things, then, and in such event, I give and bequeath to each such person so contesting or objecting or attacking the sum of One Dollar (\$1.00) and no more. Such One Dollar (\$1.00) bequest shall be in lieu of the provisions which I have made, or which I might have made, herein for any such person so contesting or objecting to, or attacking, this will and all legacies, bequests, devises or other beneficial interests provided in this will for such person shall revert to, and become a part of, the residue of my estate and shall be disposed of in like manner therewith, as herein provided.

Article XII.

If any paragraph, sentence, clause, phrase or provision of this instrument shall be found to be, or declared to be, invalid, then I hereby declare that the rest and remainder hereof shall stand and be my last will and testament, regardless of any such invalidity of such paragraph, sentence, clause, phrase and/or provision.

In Witness Whereof, I have hereunto set my hand this 21st day of December, 1950.

PRESTON L. LYKINS

The foregoing instrument, consisting of fourteen

(14) pages, including this page, was at the date thereof declared to us by the testator, Preston L. Lykins, to be his last will and testament, and he thereupon, in our presence, both being present at the same time, subscribed his name thereto, and we thereupon, at his request, and in his presence, and in the presence of each other, subscribed our names hereto as attesting witnesses.

JESSE H. MEYER

Residing at 2981-106 Ave., Oakland, Cal.

PAUL S. JORDAN

Residing at 2754 Baker Street, San Francisco, California.

Certification of Copy Attached.

[Endorsed]: Filed Feb. 6, 1951. Martin Mongan, Clerk.

EXHIBIT "2"

122409

WILL

I, Mary T. Lykins, of San Francisco, California, over the age of twenty-one (21) years, being of sound and disposing mind and memory and not acting under duress, menace, fraud or undue influence of any person whomsoever, do make, publish and declare this my last will and testament in the manner following;

Article I

I do hereby revoke any and all wills and codicils to wills previously made by me.

Exhibit "2"—(Continued)

Article II

I hereby declare that I am married and that my husband's name is Preston L. Lykins. I have no children and there are no children of mine now deceased leaving issue now surviving.

Article III

With the exception of my jewelry and personal effects which constitute my separate property, all other property belonging to me, or in which I have any interest, constitutes the community property of my said husband, Preston L. Lykins, and me.

Article IV

I hereby appoint my said husband, Preston L. Lykins, and my niece, Elizabeth G. Williams, of Berkeley, California, as co-executors of this will, and I direct that they shall serve in that capacity without bonds. Should either my said husband or the said Elizabeth G. Williams predecease me, or, if for any reason, either of them shall be unable or unwilling to act as an executor of this will, then I direct that the other of them shall act as sole executor of this will, he or she (as the case may be) to serve without bond. Should my said husband and the said Elizabeth G. Williams both predecease me, or should both of them, for any reason, be unable or unwilling to act as an executor of this will, then I appoint Wells Fargo Bank & Union Trust Co., Market and Montgomery Streets, San Francisco, California, to act as sole executor of this will.

Exhibit "2"—(Continued)

My said executors, in addition to the powers of executors under the law, shall have full power to sell, exchange, lease, mortgage, or pledge any property of my estate, whether real or personal (excluding, however, all items of real and personal property specifically bequeathed under the provisions of this will) and to invest and reinvest monies coming into their hands, all without previous order of court and with or without notice, and upon such terms and conditions as they may deem best, but subject, however, to confirmation by court, as provided by law.

Article V

I give, devise and bequeath all of my property and estate, both real and personal, and wherever situated, to my said husband, Preston L. Lykins, if he shall survive me.

Article VI

If my said husband shall predecease me, then I direct that my said executors shall pay all State Inheritance and Federal Estate taxes due from my estate or from any person interested therein, it being my express wish and intention that each of the hereinafter named legatees, devisees and beneficiaries under this will shall not be charged with, or required to pay, or to contribute toward the payment of, any portion of such taxes, but that their respective shares of my estate, as hereinafter provided, shall go to and vest in them free of any such taxes. In the eventuality contemplated by this

Exhibit "2"—(Continued)

Article VI, i.e., that my said husband shall not survive me, then all such State Inheritance and Federal Estate taxes shall be a charge against, and shall be paid from, the residue of my estate.

Article VII

If my said husband shall predecease me, then my property and estate is hereby disposed of as follows:

(a) I give and bequeath all of my personal effects and jewelry and the entire contents of my family home in San Francisco, California, including, but not restricted to, all furniture, furnishings, dishes, silverware, bric-a-brac, linens and objects of art, situated therein at the time of my death, to my said niece, Elizabeth G. Williams, and to my niece, Eula G. Elliott, also of Berkeley, California, share and share alike, or to the survivor of my said nieces, should one of them predecease me.

(b) I give, devise and bequeath the real property, together with all improvements thereon, situated at 13th and K Streets, Sacramento, California, and commonly known as "No. 1300 K Street," now belonging to, and standing of record in the names of, my said husband and me (provided the said property is owned by me at the time of my death) to my grand-niece, Elizabeth Elliott of Berkeley, California. Should the said Elizabeth Elliott predecease me, then the property mentioned in this subdivision (b) of this Article VII shall go to and vest equally in her living issue by right of representation; or, failing such issue then surviving, in my

Exhibit "2"—(Continued)

grand-nephew, Roy H. Elliott, Jr., if he be living, and if not living, then said property shall constitute and be a part of the residue of my estate and shall be disposed of in like manner therewith.

(c) I give, devise and bequeath the Lykins Ranch in Sacramento County, California, consisting of one hundred twenty-seven (127) acres of land, more or less, now owned and standing of record in the names of my husband and me, together with all improvements, farm equipment, livestock, buildings and the entire contents of all such buildings, including household furniture and furnishings (provided the said ranch property is owned by me at the time of my death) to the said Roy H. Elliott, Jr.; provided, however, that should the said Roy H. Elliott, Jr., predecease me, then the property described in this subdivision (c) of this Article VII shall go to and vest equally in his living issue by right of representation; or, failing such issue then surviving, in the said Elizabeth Elliott if she be living, and if not living, then said ranch property shall constitute and be a part of the residue of my estate and shall be disposed of in like manner therewith.

(d) I give and bequeath the sum of Five Thousand Dollars (\$5,000.00) to my nephew, Stewart Snider, of Monterey, California, if he be living; and, if not living, then to his living issue by right of representation.

(e) I give and bequeath the sum of Three Thou-

Exhibit "2"—(Continued)

sand Dollars (\$3,000.00) to my nephew, Earl Snider, of Denair, California, if he be living; and, if not living, then to his living issue by right of representation.

(f) I give and bequeath the sum of Five Thousand Dollars (\$5,000.00) to the Shriners' Hospital For Crippled Children, a corporation, to be used exclusively for the benefit of the hospital located in the City and County of San Francisco, State of California, owned, operated and maintained by said corporation.

(g) I give and bequeath the sum of Five Thousand Dollars (\$5,000.00) to Washington Lodge No. 20 F. & A.M. of Sacramento, California; such bequest to be used for the perpetual care of that certain cemetery plot standing of record in the names of P.L. Lykins and N. G. Curtis, and situated in the cemetery maintained by the City of Sacramento, California.

(h) I give and bequeath the sum of Two Thousand Five Hundred Dollars (\$2,500.00) to The Masonic Homes of California, a corporation, to be used exclusively for the benefit of the Home for the Aged owned, operated and maintained by said corporation at Decoto, California.

(i) I give and bequeath the sum of Two Thousand Five Hundred Dollars (\$2,500.00) to The Masonic Homes of California, a corporation, to be used exclusively for the benefit of the Home for

Exhibit "2"—(Continued)

Children owned, operated and maintained by said corporation at Covina, California.

(j) I give and bequeath the sum of Ten Thousand Dollars (\$10,000.00) to Robert K. Pattridge, in appreciation of his many years of service to me, provided he is in my employ at the time of my death. Should the said Robert K. Pattridge not be in my employ at the time of my death, then this bequest shall lapse.

(k) I give and bequeath the sum of Ten Thousand Dollars (\$10,000.00) to my good friend, Dr. John Philip Strickler, of San Francisco, California, as a token of my gratitude and friendship, and in appreciation of his many kindnesses toward me.

(1) After carrying out all of the foregoing provisions of this Article VII, after payment by my said executors of all State Inheritance and Federal Estate taxes due from my estate or from any person interested therein, as directed in Article VI of this will, and after payment by my said executors of all debts and claims and expenses of administration, I give, devise and bequeath all of the rest, residue and remainder of my property and estate, both real and personal, and wherever the same may be situated, to the said Elizabeth G. Williams, in trust, nevertheless, to hold, manage and distribute in accordance with the uses and purposes mentioned in Article VIII of this will and under

Exhibit "2"—(Continued)

the terms and conditions mentioned in Article IX hereof. Said trustee shall act without bond.

Article VIII

(a) It is my desire and purpose, in the event that my said husband, Preston L. Lykins, shall predecease me, to devote a substantial part of my estate to religious and charitable uses and purposes, and to make such provision therefor in this will. The said Elizabeth G. Williams, the trustee mentioned in subdivision (1) of Article VII of this will, is fully aware of this desire and purpose and she shall accordingly invest and reinvest the trust property to be distributed to her hereunder, collect the income therefrom, pay all expenses incidental to the administration of the trust, and then apply the net income therefrom as follows:

All of the annual net income from the trust property shall be used by my said Trustee exclusively for religious, charitable and educational purposes. In this connection I direct that such annual income shall be divided and distributed by said Trustee at such times, in such manner, and in such proportions as she in her sole and exclusive discretion shall determine (subject only to the direction that the entire annual net income shall be distributed, and that no part thereof shall be accumulated) among any or all of the following named corporations or institutions:

John Milton Society For The Blind, 156 Fifth Avenue, New York, New York.

Exhibit "2"—(Continued)

Hebrew Evangelization Society, Inc., 2209 Michigan Avenue, Los Angeles, California.

The Fuller Foundation, Pasadena, California. All payments made to this institution are to be used in furthering the religious broadcasting activities of Dr. Charles E. Fuller, during his lifetime, and thereafter to such use as the Board of Directors of the Fuller Foundation shall direct in furthering the objectives of that institution.

American Bible Society, 450, Park Avenue, New York 22, New York.

Gramercy Boys' Club, 380 East 143rd Street, New York, New York.

(b) Upon the death of my said Trustee, Elizabeth G. Williams, the trust shall cease and terminate and the entire principal or corpus of the trust estate together with any accrued or accumulated income thereon shall thereupon vest in and be distributed to the following named beneficiaries in the following proportions:

Twenty percent (20%) thereof to said above mentioned John Milton Society for the Blind.

Twenty percent (20%) thereof to said above mentioned Hebrew Evangelization Society, Inc.

Twenty percent (20%) thereof to said above mentioned The Fuller Foundation. The share of the trust estate so distributed to this beneficiary shall be used in furthering the religious broadcasting activities of Dr. Charles E. Fuller, during his lifetime, and shall, thereafter to the extent that such share

Exhibit "2"—(Continued)

remains unexpended, be used in furthering the objectives of that institution as may be determined in the discretion of its Board of Directors.

Twenty percent (20%) thereof to said above mentioned American Bible Society.

Twenty percent (20%) thereof to said above mentioned Gramercy Boys' Club.

(c) In the event that any of the charitable corporations or institutions hereinabove named in this Article VIII shall not be in existence at the date of the death of my said Trustee, Elizabeth G. Williams, and the consequent termination of the trust, or in the event that any of said charitable corporations or institutions cannot for any reason take and receive the portions of the trust estate hereinabove given to such charitable corporation or institution upon the termination of the trust, then in either of such events, the portion of the trust estate so given to such charitable corporation or institution shall be divided between, and shall vest equally in, the other charitable corporations or institutions hereinabove named which are then in existence and can take and receive the trust property going to them under the terms of his will.

(d) Said Wells Fargo Bank & Union Trust Co. is hereby appointed as successor Trustee to Elizabeth G. Williams and shall, upon the death of said Elizabeth G. Williams and the consequent termination of the trust hereby created, succeed her for the sole purpose of winding-up the administration of

Exhibit "2"—(Continued)

the trust estate as rapidly as is practicable and of distributing the same in accordance with the provisions of this will. Said successor Trustee shall also serve without bond and shall possess, to the extent necessary to the winding-up and distribution of the trust estate in a sound, orderly and business-like manner, and in a manner protective of the best interests of the beneficiaries thereof, all of the authority and powers provided for under Article IX of this will. Said successor Trustee is also hereby empowered in its sole discretion to sell and convert into cash the entire trust estate coming into its hands, in the event that such sale and conversion will, in the opinion of the successor Trustee, enable it to make a more practical division of the cash so realized between the several beneficiaries in the proportions hereinabove specified. In this connection I have in mind that the character of the trust estate, at the time of the termination of the Trust, may be such as to make impracticable or inadvisable a distribution thereof in kind to said beneficiaries in the proportions to which they are respectively entitled under the provisions of subdivision (b) of this Article VIII.

(e) In the event that, for any of the reasons set forth in Sections 41, 42, or 43 of the Probate Code of the State of California, my executors are unable to distribute any portion of my estate in the manner provided for under Articles VII and VIII of this will, then I direct that in such event such portion

Exhibit "2"—(Continued)

of my estate shall be distributed, and I give, devise and bequeath the same to the said Elizabeth Elliott and the said Roy H. Elliott, Jr., share and share alike. Should the said Elizabeth Elliott or the said Roy H. Elliott, Jr., predecease me, then his or her share shall go to and vest equally in his or her then surviving issue, per stirpes, and not per capita, or, failing such issue then surviving, in the survivor of the said Elizabeth Elliott and the said Roy H. Elliott, Jr. In this connection, however, I shall expect the said Elizabeth Elliott and the said Roy H. Elliott, Jr. to respect my wishes and intentions in disposing of a portion of my estate for certain charitable, religious and educational purposes, as specified in Articles VII and VIII of this will, and I am confident that neither of them will voluntarily seek to defeat those wishes and intentions.

Article IX.

To carry out the purposes of the Trust created by this will, and subject to any of the limitations set forth elsewhere in this will, the trustee shall have the following powers and authority in the administration of said Trusts, in addition to those now or hereafter conferred by law, namely:

(a) To hold and retain in the discretion of the Trustee any of the property coming into her or its possession hereunder, in the same form as that in which it is received; also to sell at public or private sale for cash or upon terms, improve, rent,

Exhibit "2"—(Continued)

lease (for terms within or extending beyond the expiration of the Trusts), mortgage, transfer, exchange or otherwise deal with the whole or any part of the trust property, upon such terms and conditions as the trustee may deem advisable; to borrow money, to execute a note or notes therefor and to secure the same by the execution of pledges, mortgages or deeds of trust upon the trust properties or any part thereof; to deal with the trust properties as fully and freely as if they were the sole and individual properties of the Trustee; to invest and reinvest the trust estate in the absolute discretion of the Trustee in sound securities without being limited to securities legal for savings banks and trust funds in the State of California.

(b) To compromise, arbitrate or otherwise adjust claims in favor of or against the Trusts; to carry such insurance as the Trustee may deem advisable on all property forming a part of the trust estate.

(c) To advance funds to the Trusts for any trust purpose; such advances with interest at current rates to be a first lien on and to be repaid out of principal or income; to reimburse the Trustee from principal or income for any loss or expense incurred by reason of the holding and preserving by the Trustee of any property from a part of the trust estate.

(d) If the Trustee shall at any time hold securities under the Trusts, the Trustee shall apply the entire net income of such securities as hereinabove

Exhibit "2"—(Continued)

directed in this will, irrespective of the price paid for said securities or of their market value at any time; it being intended hereby that no part of such income shall be applied as a sinking fund or otherwise to offset the gradual loss of the premium upon the market value or purchase price of such securities; all stock dividends and amounts received upon the sale of rights to subscribe for stocks or any profits accruing from the exercise of such rights shall be credited to principal and added to the trust estate and held as a part thereof. The Trustee may exercise any right or option of subscription or otherwise, which may at any time attach, belong or be given to the holders of any stocks, bonds, securities or other instruments in the nature thereof, forming a part of the trust estate; and said Trustee may join in any plan of lease, mortgage, consolidation, reorganization, or foreclosure of any corporation, trust or organization, or of the property or assets thereof in which the trust estate may hold any stocks, bonds or other securities, and may take or hold any securities issued under such plan and pay any assessments thereunder.

(e) In any case in which the Trustee is required, pursuant to the provisions of the Trusts hereby created, to divide the trust estate into parts or shares or to distribute the same, the Trustee is hereby authorized and empowered in the absolute discretion of the Trustee to make such division or distribution in kind or partly in kind and partly in

Exhibit "2"—(Continued)

money and for the purpose of such division or distribution, the judgment of the Trustee concerning the propriety thereof and the relative value for the purposes of division or distribution of the property so allotted shall be binding and conclusive upon all persons interested therein; and as hereinabove provided in this will, the corporate successor Trustee is empowered to sell some of the trust property or the whole thereof, should said Trustee deem such sale necessary and to the best interests of the beneficiaries among whom the trust estate is to be divided upon the final termination of the Trusts as herein provided.

(f) In addition to the foregoing, I generally desire to, and do, hereby vest in the Trustee all such general and particular powers as may be necessary or convenient to enable her or it to attend to all of the business of the trust estate in the most direct and efficient way without being required to apply to any court and without being unduly hampered by personal liability or unfavorable results of any action that such Trustee may take in good faith and in the exercise of reasonable judgment and care.

Article X.

(a) It may not be practical or expedient for my said executors to pay and distribute some, or any, of the specific legacies, bequests and devises provided for in Article VII of this will, within a period of one year after my death. It is accordingly my

Exhibit "2"—(Continued)

direction that no interest shall be or become due or payable on any of said legacies, bequests or devises, at any time prior to the actual distribution thereof by my said executors.

(b) Should my said husband, Preston L. Lykins, predecease me, thus making the disposition of my estate subject to the provisions of Articles VI, VII, VIII and IX of this will, then I direct that all income received by my executor from all property of my estate, during the administration thereof and prior to the final distribution thereof as provided in said last mentioned articles of this will, shall, to the extent necessary, be used for the payment of probate administration expenses, taxes and other charges or claims against my estate, and for the payment of expenses incurred or expended in the care, preservation, management and maintenance of all of the property of my estate during administration, and to the extent that such income is not so used or expended it shall become a part of the residue of my estate. In this connection it is my express wish and intention that the right of any devisee or legatee under this will or of any beneficiary under the Trusts hereby created to receive income from any property hereby devised or bequeathed, or to receive income from the trust property, as the case may be, shall in no event accrue until after the date of distribution of such request or devise, or, in the case of said trust beneficiaries, until after the date of distribution to the Trustee of the property con-

Exhibit "2"—(Continued)

stituting the trust estate, and not from the date of my death.

Article XI.

I have purposely and intentionally made no provision in this will for any person or persons other than those herein specifically named, whether claiming to be an heir of mine or not. Accordingly, if, notwithstanding the terms and provisions of this will, any person not named as a devisee, legatee or beneficiary herein, whether a legal heir or claiming to be a legal heir of mine, shall establish his or her right to inherit any portion of my estate, then to such person I give and bequeath the sum of One Dollar (\$1.00) and no more. Furthermore, if any person, whether a beneficiary under this will or not mentioned herein, or any legal heir of mine, or any person claiming under any of them, shall directly or indirectly contest this will or the probate thereof, or object to any of the provisions hereof, or directly or indirectly attack or seek to impair any of its provisions, or conspire with, or voluntarily assist, anyone attempting to do any of those things, then, and in such event, I give and bequeath to each such person so contesting or objecting or attacking the the sum of One Dollar (\$1.00) and no more, Such One Dollar (\$1.00) bequest shall be in lieu of the provisions which I have made, or which I might have made, herein for any such person so contesting or objecting to, or attacking, this will and all legacies, bequests, devises or other beneficial interests provided in this will for such person shall revert

Exhibit "2"—(Continued)

to, and become a part of, the residue of my estate, and shall be disposed of in like manner therewith, as herein provided.

Article XII.

If any paragraph, sentence, clause, phrase or provision of this instrument shall be found to be, or declared to be, invalid, then I hereby declare that the rest and remainder hereof shall stand and be my last will and testament, regardless of any such invalidity of such paragraph, sentence, clause, phrase and/or provision.

In Witness Whereof, I have hereunto set my hand this 21st day of December, 1950.

MARY T. LYKINS.

The foregoing instrument, consisting of fourteen (14) pages, including this page, was at the date thereof declared to us by the testatrix, Mary T. Lykins, to be her last will and testament, and she thereupon, in our presence, both being present at the same time, subscribed her name thereto, and we thereupon, at her request, and in her presence, and in the presence of each, subscribed our names hereto as attesting witnesses.

JESSE H. MEYER.

Residing at 2981 - 106th Avenue, Oakland, Cal.

PAUL S. JORDAN.

Residing at 2754 Baker Street, San Francisco, California.

Certification of Copy Attached.

[Endorsed]: Filed Oct. 1, 1951. Martin Mongan, Clerk.

EXHIBIT "4"

In the Superior Court of the State of California,
in and for the City and County of San Fran-
cisco.

No. 120126—Dept. 9

In the Matter of the Estate of PRESTON L. LY-
KINS, also know as P. L. Lykins, Deceased.

DECREE OF SETTLEMENT OF FIRST AND
FINAL ACCOUNT AND OF FINAL DIS-
TRIBUTION.

Elizabeth G. Williams, as executrix of the last will and testament of Preston L. Lykins, also known as P. L. Lykins, deceased, having on the 1st day of June, 1953, rendered and filed herein a full account and report of her administration of said estate, which account was for a final settlement, and having with said account filed a petition for the settlement thereof and for final distribution of said estate, and said final account and petition having come on regularly for hearing on this day, proof having been made to the satisfaction of the court that notice of the settlement of said final account and of the hearing of said petition had been duly given by the clerk in the manner and for the time provided by law, and no one appearing to except to or contest said account and petition, and it appearing to the court and the court finding:

That Preston L. Lykins, alias, died on or about the 8th day of January, 1951, in the City and

Exhibit "4"—(Continued)

County of San Francisco, State of California, being then a resident of said City, County and State; that said decedent left a last will and testament dated the 21st day of December, 1950, which was filed herein on the 3rd day of February, 1951, together with a petition for the probate of the same and for the appointment of said petitioner and Mary T. Lykins as executrices thereof; that subsequent thereto and after due and regular proceedings to that end had and taken, the said last will and testament of said decedent was by an order duly given and made on the 19th day of February, 1951, admitted to probate as the last will and testament of said Preston L. Lykins, alias, deceased, and by the same order said petitioner and Mary T. Lykins were appointed executrices thereof; that Mary T. Lykins and said petitioner qualified as such executrices and Letters Testamentary were duly issued to them on the 20th day of February, 1951, and from said last mentioned date to the 18th day of September, 1951, Mary T. Lykins and said petitioner were continuously the duly appointed, qualified and acting executrices of the last will and testament of said decedent; that Mary T. Lykins died on the 18th day of September, 1951, and since said last mentioned date said petitioner, Elizabeth G. Williams, has been continuously and now is the sole surviving executrix of the last will and testament of said Preston L. Lykins, alias, deceased;

That notice to creditors was duly given by pub-

Exhibit "4"—(Continued)

lication as required by law; that within thirty days after the completion of the publication of said notice to creditors said petitioner filed herein an affidavit showing the due publication of notice to creditors, containing a copy of the notice and stating the date of the first publication thereof and the name of the newspaper in which the same was printed;

That more than six months have elapsed since the appointment of said petitioner as such executrix and more than six months have expired since the first publication of notice to creditors;

That on the 18th day of September, 1951, said petitioner duly made and returned to this court a true Inventory and Appraisement of all the estate of said decedent which had come to her possession or knowledge;

That on the 27th day of October, 1952, the Inheritance Tax Appraiser appointed herein filed his report showing the inheritance taxes due to the State of California by reason of the death of said decedent; that on the 22nd day of January, 1953, an amended inheritance tax report was filed; that said taxes have been paid;

That the first and final account presented by said executrix to this court is a full, true and correct account and report of her administration of said estate from the date of appointment to the 1st day of May, 1953; that since the date of filing said first and final account, said petitioner has received dividends and rents in the total sum of \$2,976.07;

Exhibit "4"—(Continued)

That the statement showing the claims against said estate which were presented or filed, and allowed and paid, which is attached to said first and final account, is full, true and correct;

That the statement attached to said first and final account showing the commission of said executrix and the fee of her attorneys, Messrs. Heller, Ehrman, White & McAuliffe, is correct;

That the statement of assets belonging to said estate which is attached to said first and final account is full, true and correct;

That the Federal Estate Tax Return and the Federal and/or State of California income tax returns of the decedent and the estate of said decedent have not yet been audited; that said petitioner should be authorized to reserve the sum of five thousand dollars (\$5,000) as and for payment of any deficiency in Federal Estate and/or income tax and/or State of California income tax not now ascertained for which the estate of said decedent or said petitioner, as executrix, might be liable.

That all the debts of said estate and of said decedent, all claims and expenses of administration of said estate thus far incurred, and all taxes which have attached to or accrued against said estate, including personal property tax and Federal estate tax (subject, however, to audit of the latter), have been paid and discharged, and said estate is now in a condition to be closed;

That by the terms of the last will and testament

Exhibit "4"—(Continued)

of the said Preston L. Lykins, alias, deceased, his entire estate was given, devised, and bequeathed unto Mary T. Lykins, his wife; that said Mary T. Lykins survived said Preston L. Lykins, alias, but herself died on or about the 18th day of September, 1951; that subsequent thereto and pursuant to proceedings had and taken in the Superior Court of the City and County of San Francisco, State of California, the last will and testament of the said Mary T. Lykins was admitted to probate and on October 15, 1951, Letters Testamentary were issued to Elizabeth G. Williams; that ever since said last mentioned date and at the present time said Elizabeth G. Williams has been and now is the duly appointed, qualified and acting executrix of the last will and testament of Mary T. Lykins, deceased;

That by reason of the fact that Mary T. Lykins survived this decedent, the entire net estate of the estate of Preston L. Lykins, alias, deceased, should be distributed to Elizabeth G. Williams in her capacity as the executrix of the last will and testament of Mary T. Lykins, deceased;

That by a decree of partial distribution made, entered and filed on the 30th day of March, 1953, in the matter of the above-entitled estate, there was distributed from said estate unto the estate of Mary T. Lykins, deceased, for the purpose of administration of the matter of the latter estate, the undivided one-half ($\frac{1}{2}$) interest owned by Preston L. Lykins at the time of his death in that certain real

Exhibit "4"—(Continued)

property situate in the County of Sacramento, State of California, and more specifically described on pages 2 and 3 of the Inventory and Appraisement on file herein;

That no person interested in the estate of said Preston L. Lykins, alias, deceased, or in any of the property of said estate or otherwise or at all, is now in the military service of the United States of America within the meaning of the Act of Congress of the United States of America approved May 14, 1940, and known and cited as the "Soldiers' and Sailors' Civil Relief Act of 1940";

It Is Therefore Ordered, Adjudged and Decreed that notice to creditors has been duly given.

It Is Further Ordered, Adjudged and Decreed that the first and final account of said executrix be and the same is hereby settled, allowed and approved as rendered and presented for settlement, and that said executrix be and she is hereby allowed the sum of five hundred dollars (\$500) as and for closing expenses.

It Is Further Ordered, Adjudged and Decreed that said executrix be and she is hereby authorized to reserve the sum of five thousand dollars (\$5,000) as and for payment of any deficiency in Federal Estate Tax and/or income tax and/or State of California income tax not now ascertained;

It Is Further Ordered, Adjudged and Decreed that said executrix be and she is hereby directed to pay unto herself the sum of four thousand nine

Exhibit "4"—(Continued)

hundred seventy-two dollars and forty cents (\$4,972.40) as and for her compensation for ordinary services rendered by her during the administration of said estate.

It Is Further Ordered, Adjudged and Decreed that said executrix be and she is hereby directed to pay unto Messrs. Heller, Ehrman, White & McAuliffe, attorneys for executrix, the sum of two thousand five hundred twenty-five dollars and thirteen cents (\$2,525.13), representing the balance of four thousand nine hundred seventy-two dollars and forty cents (\$4,972.40) statutory attorneys' fees;

It Is Further Ordered, Adjudged and Decreed that no person interested in the estate of said decedent or in any of the property of said estate or otherwise or at all is now in the military service of the United States of America within the meaning of the Act of Congress of the United States of America approved May 14, 1940, and known and cited as the "Soldiers' and Sailors' Civil Relief Act of 1940."

It Is Further Ordered, Adjudged and Decreed that all the rest, residue and remainder of the estate of said Preston L. Lykins, also known as P. L. Lykins, deceased, hereinafter particularly described, and any other property not now known or discovered which may belong to said estate, or in which said estate may have any interest, and any property which is herein imperfectly or incorrectly described, be and the same is hereby distributed and

Exhibit "4"—(Continued)

said executrix is hereby directed to pay, transfer, and deliver the same unto Elizabeth G. Williams, as executrix of the estate of Mary T. Lykins, deceased, for the purpose of administration in the matter of the latter estate.

The following is a particular description of the said residue of said estate referred to in this decree and of which distribution is ordered, adjudged and decreed as aforesaid, to-wit:

Cash in the sum of.....\$ 6,482.68

Furniture and Furnishings and Other Personal Property:

Clothing and miscellaneous men's jewelry. Gold coins of a value of approximately \$25.

One-half interest in furniture and furnishings in six-room apartment at 1000 Mason Street, San Francisco.

One-half interest in furniture and furnishings in nine-room ranch house and miscellaneous farming equipment situated Parcel One referred to in inventory.

Real Estate: All that certain real property situate in the City or Sacramento, County of Sacramento, State of California, and described as follows:

Parcel One: Lot One (1) in the block or square bounded by K and L and Thirteenth and Fourteenth Streets, according to the official survey of said City of Sacramento, State of California, as per

Exhibit "4"—(Continued)

map or plan thereof, on file in the office of the County Recorder of said Sacramento County.

Parcel Two: The West 50 feet of Lot Eight (8) in the block or square bounded by G and H and Sixteenth and Seventeenth Streets, according to the official survey of said City of Sacramento, State of California, as per map or plan thereof on file in the office of the County Recorder of said Sacramento County.

Parcel Three: The West half of Lot Four (4) and all of Lots Five (5) and Six (6) in the Block or square bounded by G and H and Fifteenth and Sixteenth Streets, according to the official survey of the said City of Sacramento, State of California, as per map or plan thereof on file in the office of the County Recorder of said Sacramento County.

Parcel Four: The North $37\frac{1}{2}$ feet of the South 60 feet of Lot One (1) in the block or square bounded by I and J and Fourth and Fifth Streets, according to the official survey of the said City of Sacramento, State of California, as per map or plan thereof on file in the office of the County Recorder of said Sacramento County.

Parcel Five: The North 40 feet of Lot One (1) in the block or square bounded by M and N and Fourth and Fifth Streets, and the South 20 feet of the North 60 feet of said Lot One (1) in said block and square, according to the official survey of the said City of Sacramento, State of California, as per

Exhibit "4"—(Continued)

map or plan thereof on file in the office of the County Recorder of said Sacramento County.

Parcel Six: The North 20 feet of the West 60 feet of the South 80 feet of Lot One (1) in the block bounded by and between I and J, Fourth and Fifth Streets, as per the official map or plat thereof on file in the office of the County Recorder of the County of Sacramento, State of California.

Parcel Seven: The East half of Lot 7 in the block bounded by K and L, Thirteenth and Fourteenth Streets of the City of Sacramento, according to the official map or plan of said City.

Parcel Eight: The West $\frac{1}{2}$ of Lot 6, in the block bounded by 13th and 14th and K and L Streets of the City of Sacramento, according to the official plat thereof.

Securities:

100 shs. General Motors Corporation common stock, \$10 par value.

An Undivided one-half interest in the following:

300 shs. American Telephone & Telegraph Co. capital stock, no par value.

1150 shs. California Packing Corporation common stock, no par value.

50 shs. Continental Can Company, Inc. common stock, no par value.

100 shs. General Electric Company, common stock, no par value.

100 shs. Illinois Power Company, common stock, no par value.

Exhibit "4"—(Continued)

100 shs. National Biscuit Company, common stock, no par value.

315 shs. National Lead Company, common stock, no par value.

200 shs. Pacific Gas & Electric Co. 6% 1st preferred stock, no par value.

300 shs. Pacific Gas & Electric Company common stock, no par value.

50 shs. Pacific Power & Light Company 5% preferred stock, no par value.

112 shs. Pacific Telephone & Telegraph Company common stock, \$100 par value.

50 shs. Pacific Telephone & Telegraph Company preferred stock, \$100 par value.

242 shs. Richfield Oil Corp. common stock, no par value.

130 shs. Shell Union Oil Corp. common stock, no par value.

175 shs. Southern California Edison Company, 4.32% Series cumulative preferred stock, \$25 par value.

175 shs. Southern California Edison Company, 4.48% Series cumulative preferred stock.

564 shs. Standard Oil Company of California capital stock, no par value.

100 shs. The Chase National Bank, capital stock, no par value.

150 shs. United States steel Corporation common capital stock, no par value.

Exhibit "4"—(Continued)

Done in open Court this 12th day of June, 1953.

T. I. FITZPATRICK,
Judge of the Superior Court.

Recorded Aug. 7, 1953.

[Endorsed]: Filed June 16, 1953. Martin Mon-
gan, Clerk.

EXHIBIT "6"

In The Superior Court of the State of California,
In and For The City and County of San Fran-
cisco

No. 122409—Dept. 9

In the Matter of the Estate of MARY T. LYKINS,
Deceased.

DECREE OF SETTLEMENT OF FIRST AND
FINAL ACCOUNT AND OF FINAL DIS-
TRIBUTION

Elizabeth G. Williams, as executrix of the last Will and Testament of Mary T. Lykins, deceased, having on the 9th day of July, 1953, rendered and filed herein a full account and report of her administration of said estate, which account was for a final settlement, and having with said account filed a petition for the settlement thereof and for final distribution of said estate, and said final ac-

Exhibit "6"—(Continued)

count and petition having come on regularly for hearing on the 23rd day of July, 1953, proof having been made to the satisfaction of the court that notice of the settlement of said final account and of the hearing of said petition had been duly given by the clerk in the manner and for the time provided by law, and no one appearing to except to or contest said account and petition, and it appearing to the court and the court finding:

That Mary T. Lykins died on or about the 18th day of September, 1951, in the City and County of San Francisco, State of California, being then a resident of said City, County and State; that decedent left a last Will and Testament, dated the 21st day of December, 1950, which was filed herein on the 1st day of October, 1951, together with a petition for the probate of the same and for the appointment of said petitioner as executrix thereof; that subsequent thereto and after due and regular proceedings to that end had and taken, the said last Will and Testament of said decedent was by an order duly given and made on the 15th day of October, 1951, admitted to probate as the last Will and Testament of Mary T. Lykins, deceased, and by the same order said petitioner was appointed executrix thereof; that said petitioner qualified as such executrix and Letters Testamentary were duly issued to her on October 15, 1951, and from said last mentioned date said petitioner has been the duly appointed, qualified and acting executrix of the last Will and Testament of said decedent;

Exhibit "6"—(Continued)

That notice to creditors was duly given by publication as required by law; that within thirty days after the completion of the publication of said notice to creditors, said petitioner filed herein an affidavit showing the due publication of notice to creditors, containing a copy of the notice and stating the date of the first publication thereof and the name of the newspaper in which the same was printed;

That more than six months have elapsed since the appointment of said petitioner as such executrix and more than six months have expired since the first publication of notice to creditors;

That on the 22nd day of October, 1952, said petitioner duly made and returned to this Court a true Inventory and Appraisement of all the estate of said decedent which had come to her possession or knowledge;

That on the 26th day of January, 1953, the Inheritance Tax Appraiser appointed herein filed his report showing the inheritance taxes due to the State of California by reason of the death of said decedent; that said taxes have been paid;

That the first and final account presented by said executrix to this court is a full, true and correct account and report of her administration of said estate from the date of appointment to the 12th day of June, 1953; that subsequent to said date, said petitioner has received additional income, consisting of dividends, rents and savings deposit interest, in the total sum of \$5,940.20; that the total cash presently in the possession of said petitioner and

Exhibit "6"—(Continued)

available for distribution or the withholding therefrom as hereinafter decreed, amounts to the sum of \$66,372.17;

That the statement showing the claims against said estate which were presented or filed, and allowed and paid, which is attached to said first and final account, is full, true and correct;

That the statement attached to said first and final account showing the commission of said executrix and the fee of her attorneys, Messrs. Heller, Ehrman, White & McAuliffe, is correct;

That the statement of assets belonging to said estate which is attached to said first and final account is true and correct, except for the inadvertent omission from said statement of the following described United States of America Series E Savings Bonds, which are still in the possession of said petitioner and are available for final distribution:

\$5000 m.v. United States Saving bonds, Series E, issued August, 1943.

\$10,000 m.v. United States Savings bonds, Series E, issued September, 1944.

\$5000 m.v. United States Saving bonds, Series E, issued August, 1946.

\$10,000 m.v. United States Savings bonds, Series E, issued November, 1947;

That the Federal Estate Tax Return and the Federal and/or State of California income tax returns of the decedent and the estate of said decedent have not yet been audited; that said petitioner should be authorized to reserve the sum of \$20,000.00

Exhibit "6"—(Continued)

as and for payment of any deficiency in Federal Estate and/or income tax and/or State of California income tax not now ascertained for which the estate of said decedent or said petitioner, as executrix, might be liable; that, in addition to said reserve, the trustee of the trust hereinafter declared should be directed to pay and satisfy from the principal of the trust estate any deficiency in excess of said \$20,000.00 on account of any or all of said taxes;

That all the debts of the said estate and of said decedent, all claims and expenses of administration of said estate thus far incurred, and all taxes which have attached to or accrued against said estate, including personal property tax and Federal estate tax (subject, however, to audit of the latter), have been paid and discharged, and said estate is now in a condition to be closed;

That although the statutory fees of said executrix' attorneys, Heller, Ehrman, White & McAuliffe, based on the value, as of date of death, of the assets reported in the Inventory and Appraisement on file herein would amount to the sum of \$8,881.39, said attorneys have agreed to reduce their said fee to the sum of \$6,231.39; that of said sum, \$3,115.95 heretofore has been paid on account, the balance of \$3,115.44 due and owing;

That by the terms of the last Will and Testament of said decedent, there was given, devised and bequeathed unto the persons hereinafter named:

(a) Elizabeth G. Williams and Eula G. Elliott,

Exhibit "6"—(Continued)

nieces of decedent, in equal shares, all the personal effects, jewelry and the entire contents of decedent's home in San Francisco, California;

(b) Elizabeth Elliott, grand-niece of decedent, real property commonly known as 1300 K Street, Sacramento, California;

(c) Roy H. Elliott, Jr., grand-nephew of said decedent, the Lykins Ranch, consisting of 127 acres in Sacramento County, California, together with all farm equipment, livestock, household furniture and furnishings;

(d) Stewart Snider, nephew of decedent, the sum of \$5,000.00;

(e) Earl Snider, nephew of decedent, the sum of \$3,000.00;

(f) Shriners' Hospital For Crippled Children, a corporation, the sum of \$5,000.00;

(g) Washington Lodge No. 20 F. & A.M. of Sacramento, California, the sum of \$5,000.00;

(h) The Masonic Homes of California, a corporation, the sum of \$2,500.00; (Home for Aged);

(i) The Masonic Homes of California, a corporation, the sum of \$2,500.00, (Home for Children);

(j) Robert K. Pattridge, the sum of \$10,000.00;

(k) Dr. John Philip Strickler, the sum of \$10,000.00;

(l) Elizabeth G. Williams, as Trustee, the entire rest, residue and remainder of the estate of said decedent, in trust for the uses and purposes

Exhibit "6"—(Continued)

mentioned in Article VIII of decedent's last Will and Testament;

That by a decree of partial distribution duly given, made and entered by the above-entitled court on the 27th day of February, 1953, all the cash bequests described in paragraphs (d) through (k) inclusive, of the preceding paragraphs were ordered distributed to the legatees therein named and each of said legacies has been paid in full;

That by the terms of Article X (b) of decedent's last Will and Testament, she directed that all income received by said petitioner from all the property of her estate during the course of administration thereof and prior to final distribution should be used for the payment of taxes, claims and expenses of administration, and that such part of said income not used in such administration should become a part of the residue of the estate; that said Article in said sub-paragraph declared the express wish and intention of decedent that no devisee or legatee or any beneficiary under the trust created by said Will to receive income should be entitled to receive the same until after the date of distribution of such bequest or devise; that no part of the income of the estate of said decedent from date of death until the date of this decree is properly distributable to any legatee, devisee or trust beneficiary named in the will;

That since the date of death of said Mary T. Lykins, deceased, a portion of the real property, known as the Lykins Ranch, specifically devised to

Exhibit "6"—(Continued)

the grand-nephew of decedent, Roy H. Elliott, Jr., was conveyed by said petitioner to Sacramento & San Joaquin Drainage District pursuant to an order of the above-entitled court made and entered July 28, 1952, by reason of the fact that said decedent during her lifetime entered into an agreement with said District to convey a portion of said Ranch for right-of-way and easement purposes, which said agreement was not consummated prior to her death;

That no person interested in the estate of said Mary T. Lykins, deceased, or in any of the property of said estate or otherwise, or at all, is now in the military service of the United States of America within the meaning of the Act of Congress of the United States of America approved May 14, 1940, and known and cited as the "Soldiers' and Sailors' Civil Relief Act of 1940";

It Is Therefore Ordered, Adjudged and Decreed that notice to creditors has been duly given;

It Is Further Ordered, Adjudged and Decreed that no person interested in the estate of said decedent or in any of the property of said estate, or otherwise or at all, is now in the military service of the United States of America within the meaning of the Act of Congress of the United States of America approved May 14, 1940, and known and cited as the "Soldiers' and Sailors' Civil Relief Act of 1940";

It Is Further Ordered, Adjudged and Decreed that the first and final account of said executrix be

Exhibit "6"—(Continued)

and the same is hereby settled, allowed and approved as rendered and presented for settlement, and that said executrix be and she hereby is allowed the sum of \$500.00 as and for closing expenses;

It Is Further Ordered, Adjudged and Decreed that the said executrix be and she hereby is authorized to reserve the sum of \$20,000.00 as and for payment of any deficiency in Federal Estate Tax and/or income tax and/or State of California income tax not now ascertained;

It Is Further Ordered, Adjudged and Decreed that said executrix be and she hereby is authorized and directed to pay unto herself the sum of \$8,881.39 as and for her compensation for ordinary services rendered by her during the administration of said estate;

It Is Further Ordered, Adjudged and Decreed that said executrix be and she hereby is authorized and directed to pay unto Messrs. Heller, Ehrman, White & McAuliffe, attorneys for executrix, the sum of \$3,115.44, representing the balance of the agreed fee of \$6,231.39;

It Is Further Ordered Adjudged and Decreed that the executrix be and she hereby is authorized and directed to distribute to Elizabeth G. Williams and Eula G. Elliott, nieces of decedent, in equal shares, the following described personal property:

Clothing and miscellaneous men's jewelry.

Gold coins of a value of approximately \$25.

Exhibit "6"—(Continued)

Furniture and furnishings in six-room apartment at 1000 Mason Street, San Francisco, California.

1 white metal bracelet with many white stones.

1 White metal ring with three large white stones.

1 white metal ring with one large white stone.

1 string of white pearls with seven white stones on clip.

1 yellow metal and blue watch.

1 unset purple stone.

1 white metal clip pin with one large, ten smaller and many small white stones.

1 yellow metal pin with one white stone and many pearl-like stones.

1 yellow metal pin with small white stones.

Miscellaneous jewelery.

1 six-skin Russian sable scarf.

1 grey Broadtail coat.

1 dyed Ermine coat.

1 three-skin Fisher scarf.

1 black Alaska Seal coat.

1 natural silver fox scarf, one skin,

together with all other personal effects and jewelry owned by decedent but not now known or discovered.

It Is Further Ordered, Adjudged and decreed that the following described real property be and it is hereby distributed unto Elizabeth Elliott, grand-niece of decedent,

All that certain real property situate in the City of Sacramento, County of Sacramento, State of

Exhibit "6"—(Continued)

California, and more particularly described:

Lot One (1) in the block or square bounded by K and L and Thirteenth and Fourteenth Streets, according to the official survey of said City of Sacramento, State of California, as per map or plan thereof, on file in the office of the County Recorder of said Sacramento County.

It Is Further Ordered, Adjudged and Decreed that the following described real property, together with all improvements, farming equipment, livestock and the entire contents of all buildings situated on said premises, be and the same hereby is distributed unto Roy H. Elliott, Jr.:

All that certain real property situate in the County of Sacramento, State of California, and more particularly described as follows:

One hundred six $31/100$ acres of Swamp and Overflowed land situated in Sacramento County, State of California, and described as follows, to-wit: Survey No. 337, Swamp and Overflowed Lands situated in Sections Three (3), Four (4), Nine (9) and Ten (10), Township Four (4) North Range Four (4) East, Mount Diablo Base and Meridian and being fractional South half of Southwest quarter and fractional Southwest quarter of Southeast quarter of Section Three (3); a fractional East half of Southeast quarter of Section Four (4); fractional Northeast quarter of Northeast quarter of Section Nine (9) and fraction in North half of Northwest quarter and fractional Northwest quarter of Northeast quarter of Section Ten (10), and

Exhibit "6"—(Continued)

more particularly designated and described in the field notes of said survey as follows.

Beginning at a stake on the bank of Georgiana Slough, said stake is the West corner of Swamp Land Survey No. 336, thence South $65^{\circ} 00'$ E 5891 chains to the South corner of the above-named survey; thence South 3.06 chains; thence North $87^{\circ} 30'$ W. 64.39 chains to a stake on the bank of Georgiana Slough marked "Westfall and Debald"; thence meandering up said Slough North $6^{\circ} 45'$ West 20.0 chains; North $33^{\circ} 37'$ East 5.14 chains; North $88^{\circ} 30'$ East 4.40 chains; North $81^{\circ} 30'$ East 6.09 chains to the place of beginning run by the true meridian, Magnetic variation $16^{\circ} 25'$ E., being the same land granted to Benoni Westfall by the State of California, by a patent in Book No. 1 of Patents, Sacramento, County Records on pages 221 and 222, also described in a grant by Benoni Westfall to Rebecca Jane Westfall and recorded in Book 113 of Deeds, page 567 of said Records.

Also, that portion of Swamp and Overflowed Land Survey No. 338, Sacramento County Surveys, being a portion of Section 10, Township 4 North, Range 4 East M.D.B. & M., being more particularly described as follows:

Beginning at the Northeast corner of Swamp Land Survey 338; thence Southerly along the East line of said Survey, 740.3 feet; thence North $70^{\circ} 38'$ West a distance of 2545 feet, more or less, to a point on the North line of said Swamp Land Survey 338, said point being located North $87^{\circ} 30'$ West

Exhibit "6"—(Continued)

2381.0 feet from the Northeast corner of said survey; thence South 87° 30' East along said North line, a distance of 2381 feet to the point of beginning. Saving and Excepting an undivided one-half interest in and to all minerals, mineral deposits, oil, gas and other hydro-carbon substances of every kind and character contained in or upon said premises, together with the continuing right of entry for the full enjoyment of said rights so excepted and reserved including development work, boring of wells, making of excavations, installations, maintenance and operation of pipe lines, storage tanks and other requisite structures and removal of said substances so excepted and reserved by all usual, convenient and necessary means, but subject to the obligation to make just compensation for any injury or damage to growing crops or other improvements on said premises occasioned by the exercise of any of said rights so excepted and reserved as aforesaid, all as contained in the following deeds:

(a) Deed from Donald Seymour, also known as Donald I. Seymour, and Doris Seymour Hutchinson to Fong Yock Yee, dated October 9, 1943, recorded October 21, 1943, in Book 1026 of Official Records, at page 333;

(b) Deed from California-Western States Life Insurance Company, to Fong Yock Yee, dated October 12, 1943, recorded October 21, 1943, in Book 1026 of Official Records, at page 332;

Subject, Further, to those certain rights-of-way, easements and other interests in and to a portion

Exhibit "6"—(Continued)

of said Parcel, granted to Sacramento and San Joaquin Drainage District, by Elizabeth G. Williams, executrix, pursuant to an order of the Probate Court having jurisdiction of the estate of said decedent (made and entered July 28, 1952) and directing a conveyance of real property sold on contracts by decedent.

It Is Further Ordered, Adjudged and Decreed that all the rest, residue and remainder of the estate of Mary T. Lykins, deceased, hereinafter particularly described, and any other property (excepting jewelry and/or personal effects) not now known or discovered which may belong to said estate, or in which said estate may have any interest, and any property which is herein imperfectly or incorrectly described, be and the same is hereby distributed and said executrix is hereby directed to pay, transfer, and deliver the same unto Elizabeth G. Williams, in trust (without bond), nevertheless, upon the uses and trusts declared in Articles VIII and IX of decedent's Will as follows:

"The said Elizabeth G. Williams, the trustee, * * * shall accordingly invest and reinvest the trust property to be distributed to her hereunder, collect the income therefrom, pay all expenses incidental to the administration of the trust, and then apply the net income therefrom as follows:

All of the annual net income from the trust property shall be used by my said Trustee exclusively for religious, charitable and educational purposes. In this connection I direct that such annual income

Exhibit "6"—(Continued)

shall be divided and distributed by said Trustee at such times, in such manner, and in such proportions as she in her sole and exclusive discretion shall determine (subject only to the direction that the entire annual net income shall be distributed, and that no part thereof shall be accumulated) among any or all of the following named corporations or institutions:

John Milton Society for the Blind, 156 Fifth Avenue, New York, New York.

Hebrew Evangelization Society, Inc., 2209 Michigan Avenue, Los Angeles, California.

The Fuller Foundation, Pasadena, California. All payments made to this institution are to be used in furthering the religious broadcasting activities of Dr. Charles E. Fuller, during his lifetime, and thereafter to such use as the Board of Directors of the Fuller Foundation shall direct in furthering the objectives of that institution.

American Bible Society, 450 Park Avenue, New York 22, New York.

Gramercy Boys' Club, 380 East 143rd Street, New York, New York.

Upon the death of my said Trustee, Elizabeth G. Williams, the trust shall cease and terminate and the entire principal or corpus of the trust estate together with any accrued or accumulated income thereon shall thereupon vest in and be distributed to the following named beneficiaries in the following proportions:

Exhibit "6"—(Continued)

Twenty percent (20%) thereof to said above mentioned John Milton Society for the Blind.

Twenty percent (20%) thereof to said above mentioned Hebrew Evangelization Society, Inc.

Twenty percent (20%) thereof to said above mentioned The Fuller Foundation. The share of the trust estate so distributed to this beneficiary shall be used in furthering the religious broadcasting activities of Dr. Charles E. Fuller, during his lifetime, and shall, thereafter to the extent that such share remains unexpended, be used in furthering the objectives of that institution as may be determined in the discretion of its Board of Directors.

Twenty percent (20%) thereof to said above mentioned American Bible Society.

Twenty percent (20%) thereof to said above said mentioned Gramercy Boys' Club.

In the event that any of the charitable corporations or institutions hereinabove named in this Article VIII shall not be in existence at the date of the death of my said Trustee, Elizabeth G. Williams, and the consequent termination of the trust, or in the event that any of said charitable corporations or institutions cannot for any reason take and receive the portions of the trust estate hereinabove given to such charitable corporation or institution upon the termination of the trust, then in either of such events, the portion of the trust estate so given to such charitable corporation or institution shall be divided between, and shall vest equally in, the other charitable corporations or in-

Exhibit "6"—(Continued)

stitutions hereinabove named which are then in existence and can take and receive the trust property going to them under the terms of this Will.

Said Wells Fargo Bank & Union Trust Co. is hereby appointed as successor Trustee to Elizabeth G. Williams and shall, upon the death of said Elizabeth G. Williams and the consequent termination of the trust hereby created, succeed her for the sole purpose of winding-up the administration of the trust estate as rapidly as is practicable and of distributing the same in accordance with the provisions of this Will. Said successor Trustee shall also serve without bond and shall possess, to the extent necessary to the winding-up and distribution of the trust estate in a sound, orderly and business-like manner, and in a manner protective of the best interests of the beneficiaries thereof, all of the authority and powers provided for under Article IX of this Will. Said successor Trustee is also hereby empowered in its sole discretion to sell and convert into cash the entire trust estate coming into its hands, in the event that such sale and conversion will, in the opinion of the successor Trustee, enable it to make a more practical division of the cash so realized between the several beneficiaries in the proportions hereinabove specified. In this connection I have in mind that the character of the trust estate, at the time of the termination of the Trust, may be such as to make impracticable or inadvisable a distribution thereof in kind to said beneficiaries in the proportions to which they are respectively en-

Exhibit "6"—(Continued)

titled under the provisions of subdivision (b) of this Article VIII.

To carry out the purposes of the Trusts created by this will, and subject to any of the limitations set forth elsewhere in this Will, the trustee shall have the following powers and authority in the administration of said Trusts, in addition to those now or hereafter conferred by law, namely:

To hold and retain in the discretion of the Trustee any of the property coming into her or its possession hereunder, in the same form as that in which it is received; also to sell at public or private sale for cash or upon terms, improve, rent, lease (for terms within or extending beyond the expiration of the Trusts), mortgage, transfer, exchange or otherwise deal with the whole or any part of the trust property, upon such terms and conditions as the Trustee may deem advisable; to borrow money, to execute a note or notes therefor and to secure the same by the execution of pledges, mortgages or deeds of trust upon the trust properties or any part thereof; to deal with the trust properties as fully and freely as if they were the sole and individual properties of the Trustee; to invest and re-invest the trust estate in the absolute discretion of the Trustee in sound securities without being limited to securities legal for savings banks and trust funds in the State of California.

To compromise, arbitrate or otherwise adjust claims in favor of or against the Trusts; to carry such insurance as the Trustee may deem advisable

Exhibit "6"—(Continued)

on all property forming a part of the trust estate.

To advance funds to the Trusts for any trust purpose; such advances with interest at current rates to be a first lien on and to be repaid out of principal or income; to reimburse the Trustee from principal or income for any loss or expense incurred by reason of the holding and preserving by the Trustee of any property from a part of the trust estate.

If the Trustee shall at any time hold securities under the Trusts, the Trustee shall apply the entire net income of such securities as hereinabove directed in this Will, irrespective of the price paid for said securities or of their market value at any time; it being intended hereby that no part of such income shall be applied as a sinking fund or otherwise to offset the gradual loss of the premium upon the market value or purchase price of such securities; all stock dividends and amounts received upon the sale of rights to subscribe for stocks or any profits accruing from the exercise of such rights shall be credited to principal and added to the trust estate and held as a part thereof. The Trustee may exercise any right or option of subscription or otherwise, which may at any time attach, belong or be given to the holders of any stocks, bonds, securities or other instruments in the nature thereof, forming a part of the trust estate; and said Trustee may join in any plan of lease, mortgage, consolidation, reorganization, or foreclosure of any corporation, trust or organization, or of the property

Exhibit "6"—(Continued)

or assets thereof in which the trust estate may hold any stocks, bonds or other securities, and may take or hold any securities issued under such plan and pay any assessments thereunder.

In any case in which the Trustee is required, pursuant to the provisions of the Trusts hereby created, to divide the trust estate into parts or shares or to distribute the same, the Trustee is hereby authorized and empowered in the absolute discretion of the Trustee to make such division or distribution in kind or partly in kind and partly in money and for the purpose of such division or distribution, the judgment of the Trustee concerning the propriety thereof and the relative value for the purposes of division or distribution of the property so allotted shall be binding and conclusive upon all persons interested therein; and as hereinabove provided in this Will, the corporate successor Trustee is empowered to sell some of the trust property or the whole thereof, should said Trustee deem such sale necessary and to the best interests of the beneficiaries among whom the trust estate is to be divided upon the final termination of the Trusts as herein provided.

If addition to the foregoing, I generally desire to, and do, hereby vest in the Trustee all such general and particular powers as may be necessary or convenient to enable her or it to attend to all of the business of the trust estate in the most direct and efficient way without being required to apply to any court and without being unduly hampered

Exhibit "6"—(Continued)

by personal liability or unfavorable results of any action that such Trustee may take in good faith and in the exercise of reasonable judgment and care.

The following is a description of the said residue of which distribution is hereby decreed unto said Trustee:

Cash in the sum of \$33,875.34.

Claim for refund on account of overpayment by executrix of 1951 estate Federal income tax, \$2,159.49.

Claim for refund on account of overpayment by executrix of 1951 estate California income tax, \$104.58.

Securities:

200 shares General Motors Corporation, common stock, \$10 par value.

300 shares American Telephone & Telegraph Co., capital stock, no par value.

1150 shares California Packing Corporation, common stock, no par value.

50 shares Continental Can Company, Inc., common stock, no par value.

100 shares General Electric Company, common stock, no par value.

100 shares Illinois Power Company, common stock, no par value.

100 shares National Biscuit Company, common stock, no par value.

315 shares National Lead Company, common stock, no par value.

Exhibit "6"—(Continued)

200 shares Pacific Gas & Electric Company, 6% 1st preferred stock, no par value.

300 shares Pacific Gas & Electric Company, common stock, no par value.

50 shares Pacific Power & Light Company 5% preferred stock, no par value.

130 shares Pacific Telephone & Telegraph Company, common stock, \$100 par value.

50 shares Pacific Telephone & Telegraph Company, preferred stock, \$100 par value.

242 shares Richfield Oil Corporation, common stock, no par value.

130 shares Shell Union Oil Corporation, common stock, no par value.

175 shares Southern California Edison Company, 4.32% Series, cumulative preferred stock, \$25 par value.

175 shares Southern California Edison Company, 4.48% Series, cumulative preferred stock.

564 shares Standard Oil Company of California, capital stock, no par value.

100 shares The Chase National Bank, capital stock, no par value.

150 shares United States Steel Corporation, common capital stock, no par value.

\$5,000 m.v. United States Savings Bonds, Series E issued August, 1943.

\$10,000 m.v. United States Savings Bonds, Series E issued September, 1944.

\$5,000 m.v. United States Savings Bonds, Series E issued August, 1946.

Exhibit "6"—(Continued)

\$10,000 m.v. United States Savings Bonds, Series E issued November, 1947.

Real Estate:

All that certain real property situate in the City of Sacramento, County of Sacramento, State of California, and described as follows:

The West 50 feet of Lot Eight (8) in the block or square bounded by G and H and Sixteenth and Seventeenth Streets, according to the official survey of said City of Sacramento, State of California, as per map or plan thereof on file in the office of the County Recorder of said Sacramento County.

The West half of Lot Four (4) and all of Lots Five (5) and Six (6) in the block or square bounded by G and H and Fifteenth and Sixteenth Streets, according to the official survey of the said City of Sacramento, State of California, as per map or plan thereof on file in the office of the County Recorder of said Sacramento County.

The North $37\frac{1}{2}$ feet of the South 60 feet of Lot One (1) in the block or square bounded by I and J and Fourth and Fifth Streets, according to the official survey of the said City of Sacramento, State of California, as per map or plan thereof on file in the office of the County Recorder of said Sacramento County.

The North 40 feet of Lot One (1) in the block or square bounded by M and N and Fourth and Fifth Streets, and the South 20 feet of the North 60 feet of said Lot One (1) in said block and square,

Exhibit "6"—(Continued)

according to the official survey of the said City of Sacramento, State of California, as per map or plan thereof on file in the office of the County Recorder of said Sacramento County.

The North 20 feet of the West 60 feet of the South 80 feet of Lot One (1) in the block bounded by and between I and J, Fourth and Fifth Streets, as per the official map or plat thereof on file in the office of the County Recorder of the County of Sacramento, State of California.

The East half of Lot 7 in the block bounded by K and L, Thirteenth and Fourteenth Streets of the City of Sacramento, according to the official map or plan of said City.

The West $\frac{1}{2}$ of Lot Six in the block bounded by Thirteenth and Fourteenth and K and L Streets of the City of Sacramento, according to the official plat thereof.

Done in open Court this 23rd day of July, 1953.

T. I. Fitzpatrick,
Judge of the Superior Court.

Certification of Copy Attached.

[Endorsed]: Filed August 4, 1953.

EXHIBIT "7"

U. S. Treasury Department
 Internal Revenue Service
 District Director
 100 McAllister Street
 San Francisco 2, California

In replying refer to: Jan. 24, 1955

Chief, Audit Division

A:R:30D: Room 1403A

Estate of Mary T. Lykins, Deceased

Elizabeth G. Williams, Executrix

c/o Heller, Ehrman, White & McAuliffe

14 Montgomery Street,

San Francisco 4, California

Report Dated: December 2, 1954. Year(s): 1951.

Dear Madam:

There is enclosed for your information and files a copy of a report covering the examination of your income tax return(s) for the year(s) indicated, recently made by a representative of this office. You have indicated your agreement to the adjustment of tax liability shown in the report.

The item checked below explains briefly how settlement of the agreed tax liability will be accomplished through the office of the District Director of Internal Revenue for your district.

Very truly yours,

Glen T. Jamison,
 District Director,

By
 Chief, Audit Division.

Exhibit "7"—(Continued)

Enclosure.

[] Deficiency: The District Director will present to you at an early date a bill for payment of the tax, together with interest, at which time remittance should be made to that official, provided you have not already paid the full amount due.

[] Net Deficiency: After the overassessment(s) have been processed by the District Director, you will be presented with a bill for the amount due, at which time remittance should be made to the District Director.

[] Net Overassessment: After the overassessment(s) have been processed by the District Director, you will be advised as to how the overassessments have been applied, and will receive a check for the amount due you.

[X] Overassessment: After the overassessment(s) have been processed by the District Director, you will receive a check in payment of the overassessment and interest, provided there are no outstanding taxes against which the amount should be credited.

Schedule No. 1

Adjustments to Income

1. Net income on return.....	\$8,711.42
5. Nontaxable income and additional deductions:	
(5-a) Income set aside	
for charity	\$8,711.42
6. Total deductions from income.....	\$8,711.42
9. Corrected net income.....	None

Exhibit "7"—(Continued)

Agreement form 870 has been secured and is attached to return for year ended December 31, 1951.

Remarks: Careful consideration has been given to the claim for refund filed on May 12, 1953 in the amount of \$2,159.49. The overassessment recommended herein represents an allowance of the claim in full.

Schedule No. 2

Report of Income Tax Audit Changes for Year 1951

Field Audit. District: San Francisco. Account No. 355601.

Tax Computation Where Tax Table Not Used	
Corrected net income	None
Income subject to tax.....	None

Single or Separate Return

Taxable income	None
Corrected tax	None

Corrected tax	None
Less: Tax liability disclosed by return....	\$2,158.18

Overassessment	\$2,158.18
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Computation of Additional Tax or Overassessment

Corrected tax liability	None
Less: Previous assessment.....	\$2,158.18

Overassessment	\$2,158.18
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[Endorsed]: Plaintiff's Exhibit No. 1 Filed January 2, 1957.

[Title of District Court and Cause.]

MEMORANDUM AND ORDER FOR
JUDGMENT

Goodman, District Judge.

This is an action for the refund of income taxes allegedly erroneously assessed and collected from the Estate of Preston L. Lykins of which plaintiff is the executrix. The cause has been submitted upon stipulated facts. The sole issue is whether or not the estate is entitled, under the provisions of Section 162(a) of the Internal Revenue Code of 1939, to deduct from its gross income for 1951 certain income which was ultimately destined to be received by charitable organizations.

On December 21, 1950, Preston Lykins and his wife Mary T. Lykins executed reciprocal wills. Preston's will gave his entire estate to Mary and provided that, in the event she predeceased him, certain designated beneficiaries should receive specific bequests and devises and the remainder of his property should be held in trust for the benefit of certain charitable organizations. Mary's will gave her entire estate to Preston and contained the same provisions for specific bequests and devises and a residual charitable trust, to be operative in the event he predeceased her. Both wills provided that no legatee or devisee should be entitled to interest or income during the period of administration.

Preston Lykins died on January 8, 1951. His wife, Mary, died nine months later on September 18, 1951, while his estate was still in probate. Un-

der the terms of Preston's will, his entire estate went to Mary. The charitable provisions of his will did not become operative. Upon Mary's death, the right to receive all of the property of Preston's estate became vested in her estate. Since her will provided that none of the income from her estate during the period of administration should accrue to any devisee or legatee, such of the income received during that period as was not expended to pay taxes and the cost of administration ultimately would go to the residual charitable trust. Thus, plaintiff contends that upon Mary's death, all of the future income of Preston's estate became irrevocably committed to the charitable trust established by Mary's will, and, under the provisions of Section 162(a) of the Internal Revenue Code of 1939, was not taxable income. She urges that the Commissioner erred in disallowing a deduction from the gross estate income for 1951 of the income received after September 18, 1951, the date of Mary's death.

Section 162(a) of the Internal Revenue Code of 1939 provided that:

“The net income of the estate or trust shall be computed in the same manner and on the same basis as in the case of an individual except that—

(a) Subject to the provisions of subsection (g), there shall be allowed as a deduction (in lieu of the deduction for charitable, etc., contributions authorized by section 23(o)) any part of the gross income, without limitation, which pursuant to the terms of the will or deed creating the trust, is dur-

ing the taxable year paid or permanently set aside for the purposes and in the manner specified in section 23(o) or is to be used exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, or for the establishment, acquisition, maintenance or operations of a public cemetery not operated for profit.”

The language of Section 162(a) conditions the charitable deduction upon the commitment of income to charitable purposes by the will of the decedent. It is not necessary that the will definitely direct the charitable contributions claimed as deductions if the contributions are actually made during the taxable years as a consequence of discretionary authority granted by the will. *Old Colony Trust Co. v. Commissioner*, 301 U.S. 378 (1937).¹ But, the statute plainly contemplates that the contribution must be the result of a charitable intent expressed in the will.

Plaintiff cites no authority supporting her position that the deduction is allowable even though the commitment of the income to charitable purposes during the taxable year results from circumstances entirely extraneous to the decedent's will. Plaintiff urges that the purpose of the statute is to encourage gifts for charitable purposes, *Old Colony Trust Co. v. Commissioner*, *supra*, and that the certainty that income will eventually go to the charity is, in

¹ This case was decided in reference to Section 162(2) of the Revenue Act of 1928, 45 Stat. 838, but its language is identical to the language of Section 162(a) of the Internal Revenue Code of 1939.

itself, sufficient to justify the statutory deduction. But here the commitment of the income from Preston's estate to charity did not result from any statutory encouragement given him to make a charitable bequest. He willed his entire estate to his wife. The allowance of the claimed deduction would not be in furtherance of the statutory purpose.

Judgment will enter for defendant upon Findings presented pursuant to the Rules.

Dated: March 28, 1957.

/s/ LOUIS E. GOODMAN,
United States District Judge.

[Endorsed]: Filed March 28, 1957.

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above entitled action came on regularly for trial on January 2, 1957 before the Court sitting without a jury, Honorable Louis E. Goodman, United States District Judge, presiding. Robert C. Harris, Esq. and Charles A. Wood, Jr., Esq. appeared for plaintiff, and Lloyd H. Burke, Esq., United States Attorney, by Lynn J. Gillard, Esq., Assistant United States Attorney, appeared for defendant. The matter was submitted for decision upon a stipulation of facts and briefs since filed. From the evidence the Court makes the following

Findings of Fact

1. The above entitled action was brought by plaintiff to recover federal income taxes paid for the calendar year 1951.

2. The facts set forth in the stipulation of facts filed by the parties herein are true.

3. Preston L. Lykins died on January 8, 1951 and his wife Mary T. Lykins died on September 18, 1951. Under the terms of his will, his entire estate was left to his wife and the charitable provisions of his will did not become operative.

4. Preston L. Lykins did not, nor was it his intent to, leave any of his estate for charitable or religious purposes, and none of his estate, during the calendar year 1951, was paid, permanently set aside or used for religious or charitable purposes.

On the basis of the foregoing findings of fact the Court makes the following

Conclusions of Law

1. Section 162(a) of the Internal Revenue Code of 1939 conditions the charitable deductions upon the commitment of income to charitable purposes by the will of the decedent.

2. Defendant is entitled to judgment herein that plaintiff recover nothing, and dismissing the complaint.

Dated: April 24, 1957.

/s/ LOUIS E. GOODMAN,

United States District Judge.

Approved as to form:

Dated: April 15, 1957.

HELLER, EHRMAN, WHITE &
McAULIFFE,
Attorneys for Plaintiff.

[Endorsed]: Filed April 24, 1957.

In the United States District Court, Northern
District of California, Southern Division

Civil No. 35699

ELIZABETH G. WILLIAMS, EXECUTRIX,
ESTATE OF PRESTON L. LYKINS, DE-
CEASED, Plaintiff,

vs.

UNITED STATES OF AMERICA,
Defendant.

JUDGMENT

The above entitled action came on regularly for trial on January 2, 1957 before the Court sitting without a jury, Honorable Louis E. Goodman, United States District Judge, presiding. Robert C. Harris, Esq. and Charles A. Wood, Jr., Esq. appeared for plaintiff, and Lloyd H. Burke, Esq., United States Attorney, by Lynn J. Gillard, Esq., Assistant United States Attorney, appeared for defendant. Evidence having been introduced and the cause submitted for decision upon briefs, and the Court having made its findings of fact and conclusions of law,

Now therefore, by reason of the law and the evidence and the findings of fact and conclusions of law aforesaid,

It Is Hereby Ordered, Adjudged and Decreed that plaintiff's complaint and cause of action therein be, and the same are, hereby dismissed.

Dated: April 24th, 1957.

/s/ LOUIS E. GOODMAN,
United States District Judge.

Approved as to form:

Dated: April 15, 1957.

HELLER, EHRMAN, WHITE &
McAULIFFE,
Attorneys for Plaintiff.

Entered in Civil Docket April 24, 1957.

[Endorsed]: Filed April 24, 1957.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that Elizabeth G. Williams, Executrix of the Estate of Preston L. Lykins, deceased, plaintiff above named, hereby appeals to the United States Court of Appeals for the Ninth

Circuit from the final judgment entered in this action on the 24th day of April, 1957.

Dated: May 7, 1957.

MARTIN MINNEY,
ROBERT C. HARRIS,
CHARLES A. WOOD, JR.,
HELLER, EHRMAN, WHITE &
McAULIFFE,

/s/ By CHARLES A. WOOD, JR.,
Attorneys for Appellant.

[Endorsed]: Filed May 7, 1957.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, C. W. Calbreath, Clerk of the United States District Court for the Northern District of California, hereby certify the foregoing and accompanying documents and exhibits, listed below, are the originals filed in this court in the above-entitled case and constitute the record on appeal herein as designated by attorneys for the appellant, except the Reporter's Transcript of Trial Proceedings is not included, for the reason it has not been received by this office for filing:

Excerpt from Docket Entries.

Complaint with Exhibits and Statement of Financial Transactions.

Answer of Defendant.

Interrogatories by Defendant to Plaintiff.

Answer of Plaintiff to Interrogatories.

Memorandum Order for Judgment.

Findings of Fact and Conclusions of Law.

Judgment.

Notice of Appeal.

Appeal Bond.

Appellant's Designation of Record on Appeal.

Plaintiff's Exhibit 1.

In Witness Whereof I have hereunto set my hand and affixed the seal of said District Court this 17th day of June, 1957.

[Seal] C. W. CALBREATH,
 Clerk,

/s/ By MARGARET P. BLAIR,
 Deputy Clerk.

[Endorsed]: No. 15586. United States Court of Appeals for the Ninth Circuit. Elizabeth G. Williams, Executrix, Estate of Preston L. Lykins, deceased, Appellant, vs. United States of America, Appellee. Transcript of Record. Appeal from the United States District Court for the Northern District of California, Southern Division.

Filed: June 17, 1957.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

In the United States Court of Appeals
Ninth Circuit

No. 15586

ELIZABETH G. WILLIAMS, EXECUTRIX,
ESTATE OF PRESTON L. LYKINS, DE-
CEASED, Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

STATEMENT OF POINTS ON WHICH
APPELLANT INTENDS TO RELY

Elizabeth G. Williams, Executrix, Estate of Preston L. Lykins, deceased, appellant herein, states that the points on which appellant intends to rely on this appeal are as follows:

1. The District Court erred in finding that appellant-estate is not entitled, under the provisions of Section 162(a) of the Internal Revenue Code of 1939, to deduct from its gross income for 1951 certain income which was ultimately destined to be received by charitable organizations.

2. The District Court erred in finding that it was not the intent of Preston L. Lykins to leave any of his estate for charitable or religious purposes.

3. The District Court erred in finding that none of appellant-estate, during the calendar year 1951, was paid, permanently set aside or used for religious or charitable purposes.

4. The District Court erred in failing to find that appellant-estate's income was committed to charitable purposes so as to be deductible from its gross income for the year 1951, pursuant to the provisions of Section 162(a) of the Internal Revenue Code of 1939.

5. The District Court erred in failing to find that the will of the decedent's wife, Mary, was in fact an assignment of a portion of appellant-estate's income to charitable purposes.

6. The District Court erred in failing to find that upon the death of the decedent's wife, Mary, the sole beneficiary of appellant-estate became a charity instead of an individual.

7. The District Court erred in failing to find that upon the death of the decedent's wife, Mary, appellant-estate, including the income therefrom, became a mere asset of the decedent's wife's estate, thereby becoming committed to charitable purposes, pursuant to the terms of the will of the decedent's wife.

8. The District Court erred in granting judgment for appellee and in failing to grant judgment for appellant in the amount prayed for.

Dated: San Francisco, California, June 27, 1957.

Respectfully submitted,

MARTIN MINNEY,
ROBERT C. HARRIS,
CHARLES A. WOOD, JR.,

HELLER, EHRMAN, WHITE &
McAULIFFE,

/s/ By CHARLES A. WOOD, JR.,
Attorneys for Appellant.

Acknowledgment of Service Attached.

[Endorsed]: Filed July 1, 1957. Paul P. O'Brien,
Clerk.

[Title of Court of Appeals and Cause.]

APPELLANT'S DESIGNATION OF PARTS
OF RECORD TO BE PRINTED

Appellant designates the following portions of
the record and requests that the Clerk print the
same:

1. Plaintiff's Complaint, including Exhibits A
and B attached thereto.

2. Defendant's Answer.

3. Plaintiff's Exhibit 1, entitled "Stipulation of
Facts", including the following exhibits attached
thereto:

a) Exhibit 1, consisting of 14 pages, Will of
Preston L. Lykins.

b) Exhibit 2, consisting of 14 pages, Will of
Mary T. Lykins.

c) Exhibit 4, consisting of 9 pages, Decree of
Settlement of First and Final Account and of Final
Distribution in the Matter of the Estate of Preston
L. Lykins, deceased.

d) Exhibit 6, consisting of 15 pages, Decree of Settlement of First and Final Account and of Final Distribution in the Matter of the Estate of Mary T. Lykins, deceased.

e) Exhibit 7, Revenue Agent's Report.

4. Memorandum Order for Judgment.

5. Findings of Fact and Conclusions of Law.

6. Judgment.

7. Notice of Appeal.

8. Appellant's Designation of Record on Appeal.

9. Statement of Points on Which Appellant Intends to Rely.

10. This Designation of Parts of Record to Be Printed.

Dated: San Francisco, California, June 27, 1957.

Respectfully submitted,

MARTIN MINNEY,
ROBERT C. HARRIS,
CHARLES A. WOOD, JR.,
HELLER, EHRMAN, WHITE &
McAULIFFE,

/s/ By CHARLES A. WOOD, JR.,
Attorneys for Appellant.

Acknowledgment of Service Attached.

[Endorsed]: Filed July 1, 1957. Paul P. O'Brien,
Clerk.

